MONTANA LEGISLATIVE HISTORY

Chapter 347 1979

Bill H _____ S 150 Original bill & history ✓ C

H. Committee on Human Services		S. Committee on Public Health, Welfare	
Hearing Date(s) 3-2	___C	Hearing Date(s) 1-19	___C
_____	___C	2-2	___C
_____	___C	2-9	___C
_____	___C	2-14	___C
Date Out 3-8	___C		

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

The Law Library has no exhibits for the House Committee. Please check at Mt. Historical Society.

46th LEGISLATIVE SESSION

COMMITTEE ON Public Health, Welfare & Safety

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
45	1-08-79	1-10-79	1-15-79	1-10-79					
61	1-09-79	1-15-79	2-13-79			2-09-79			
97	1-15-79	2-16-79	2-19-79	2-16-79					
100	1-15-79	1-19-79	2-13-79			2-09-79			
109	1-16-79	1-24-79	2-08-79			2-05-79			
125	1-16-79	1-22-79	1-24-79	1-22-79					
127	1-16-79	1-22-79	1-24-79	1-22-79					
136	1-16-79	1-24-79	2-04-79		1-31-79				
151	1-18-79	1-26-79	2-02-79		1-31-79				
159	1-18-79	1-26-79	2-02-79		1-31-79				
175	1-19-79	1-29-79	2-07-79			2-05-79			
186	1-22-79	1-29-79	2-02-79	1-31-79					
238	1-24-79	2-07-79	2-19-79			2-16-79			
315	1-31-79	2-12-79	2-14-79		2-12-79				
331	2-01-79	2-12-79	2-14-79	2-12-79					
373	2-06-79	2-14-79	2-19-79		2-16-79				

(Use Separate Sheet for Senate, House Bills, and Resolutions)

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AUG 10 1979
OF MONTANA

CHAPTER NO. 347

SENATE BILL NO. 100

INTRODUCED BY NORMAN, MENAHAN

BY REQUEST OF

THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

IN THE SENATE

January 15, 1979	Introduced and referred to Committee on Public Health, Welfare, and Safety.
January 16, 1979	Fiscal note requested.
January 22, 1979	Fiscal note returned.
February 14, 1979	Committee recommend bill do pass as amended. Report adopted.
February 16, 1979	Printed and placed on members' desks.
February 17, 1979	In accordance with joint rule 11-3-1, Statement of Intent was distributed to all Senators prior to second reading.
	Second reading, do pass.
February 19, 1979	Considered correctly engrossed.
February 20, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 21, 1979	Introduced and referred to Committee on Human Services.
March 8, 1979	Committee recommend bill be concurred in. Report adopted.

March 12, 1979	Second reading, concurred in.
March 15, 1979	Third reading, concurred in.

IN THE SENATE

March 16, 1979	Returned from second house. Concurred in. Sent to enrolling.
	Reported correctly enrolled.

SENATE BILL NO. 100

INTRODUCED BY Norman - Monahan

BY REQUEST OF

THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAWS RELATING TO HEALTH CARE FACILITIES, DEFINING HEALTH CARE FACILITIES TO INCLUDE AMONG OTHER ENTITIES HOME HEALTH AGENCIES AND ADULT DAY-CARE CENTERS AND ELIMINATING EXISTING LAWS DEALING WITH HOME HEALTH AGENCIES; PROVIDING FOR A CERTIFICATE OF NEED AND FOR REVIEW OF APPLICATIONS FOR CERTIFICATES OF NEED AND APPEAL PROCEDURES, PROVIDING GUIDELINES FOR DENIAL, SUSPENSION, OR REVOCATION OF HEALTH CARE FACILITY LICENSES; PROVIDING FOR CIVIL PENALTIES; AMENDING SECTIONS 50-5-101, 50-5-103 THROUGH 50-5-106, 50-5-108, 50-5-109, 50-5-201, 50-5-204, 50-5-207, 50-5-301, 50-5-302, 50-5-304 THROUGH 50-5-307, 50-5-402, 50-5-404, 50-5-405, 50-5-408, AND 50-5-411, MCA; AND REPEALING SECTIONS 50-5-102, 50-5-205, 50-5-206, 50-5-209, 50-5-303, 50-5-401, 50-5-412, AND 50-7-101 THROUGH 50-7-309, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through 3 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Adult day-care center" means a facility, free-standing or connected to another health care facility, which provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

(2) "Affected persons" means the applicant, members of the public who are to be served by the proposal, health care facilities located in the geographic area affected by the application, agencies which establish rates for health care facilities, and agencies which plan or assist in planning for such facilities, including any agency qualifying as a health systems agency pursuant to Title XV of the Public Health Service Act.

(3) "Ambulatory surgical facility" means a facility, not part of a hospital, which provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

~~(1)~~(4) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(5) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

~~(2)--"Construction"--means--the--erection,---expansion,~~ ~~remodeling,-or-alteration-of-a-new-or-existing-facility,-the~~

~~capital--expenditure-for-which-amounts-to-$50,000-or-more-in any-12-month-period-or-any-substantial-change--in--services, any--increase-or-decrease-in-the-number-of-beds-in-excess-of 10%-of-the-licensed-capacity-of-the-facility-or-in-excess-of 10-beds,--whichever--is--the--lesser,--or--any--purchase--of therapeutic--or--diagnostic-equipment-(excluding-replacement of-existing-equipment)-in-any--12-month--period--at--a--cost exceeding-2%-of-the-facility's-total-operating-costs-for-the most--recently--completed--fiscal--year--up--to-a-maximum-of $100,000-or-exceeding-$10,000,--whichever--is--larger.---All exemptions---from---this--definition--must--nevertheless--be consistent-with-the-state-medical--facilities--plan--of--the department.~~

(6) "Construction" means the physical erection of a health care facility and any stage thereof, including ground breaking.

~~(3)~~(7) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(8) "Federal acts" means federal statutes for the construction of health care facilities.

~~(4)~~(9) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

~~(5)~~(10) "Health care facility" means ~~a---hospital, hospital-related--facility,--or-long-term-care-facility,~~ any institution, building, or agency or portion thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospitals, infirmaries, kidney treatment centers, long-term care facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, and adult day-care centers.

(11) "Health maintenance organization" means a public or private organization organized as defined in 42 U.S.C. 300e, as amended.

(12) "Home health agency" means a public agency or private organization or subdivision thereof which is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

~~(6)~~(13) "Hospital" means a ~~health---care facility licensed-by-the-department-to-provide~~ providing, by or under

the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons. Services provided may or may not include obstetrical care, emergency care, or any other service as allowed by state licensing authority. ~~A health care facility, in order to be licensed as a hospital, must~~ have has an organized medical staff, ~~provide~~ which is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provide: 24-hour nursing care by licensed ~~professional~~ registered nurses, ~~and be in compliance with the rules for licensed hospitals adopted by the department.~~ This term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

~~(7) "Hospital-related facility" means a facility licensed by the department to provide diagnosis, treatment, medical or nursing care, or medically related rehabilitation services. Such facilities include but are not limited to outpatient facilities, public health centers, rehabilitation facilities, long-term care facilities, infirmaries, mental health and mental retardation institutions, alcoholism and drug dependency centers, and half-way houses. A health care facility, in order to be licensed as a "hospital related facility", shall be in compliance with the regulations for the specific category of facility adopted by the department.~~

~~(8)~~ (14) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

~~(9)~~ (a) an "Infirmary--A" "infirmary--A" provides outpatient and inpatient care;

~~(10)~~ (b) an "Infirmary--B" "infirmary--B" provides outpatient care only.

(15) "Kidney treatment center" means a facility which specializes in treatment of kidney diseases, including freestanding hemodialysis units.

~~(11)~~ (16) (a) "Long-term care facility" means a ~~home~~ facility or part thereof which provides skilled nursing care or intermediate nursing care to a total of two or more persons or personal care to more than three persons who, ~~by reason of illness or disability, are unable to properly care for themselves and~~ are not related to the owner or administrator by blood or marriage and ~~includes the facilities defined as follows:~~ with these degrees of care defined as follows:

(i) "Skilled nursing ~~facilities" are establishments furnishing continuous skilled nursing care and related services 24 hours a day~~ care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a

24-hour basis.

(ii) "Intermediate nursing care" ~~facilities--A"--are establishments furnishing limited skilled nursing care and personal care~~ means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

~~(iii) "Intermediate care facilities--B"--are establishments providing only personal care and services to residents.~~ "Personal care" means the provision of services and care which do not require nursing skills to residents needing some assistance in performing the activities of daily living.

~~(iv) "Combination facilities"--are--establishments providing two or more of the following services: skilled nursing care and intermediate care--A and B.~~

(b) Hotels, motels, ~~boardinghouses~~ boarding homes, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care are not ~~considered to be~~ long-term care facilities.

(17) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, or the rehabilitation of such persons, or any combination of these

services.

(18) "New institutional health services" means:

(a) the construction, development, or other establishment of a health care facility which did not previously exist;

(b) any expenditure by or on behalf of a health care facility within a 12-month period in excess of $150,000, which, under generally accepted accounting principles consistently applied, is a capital expenditure. Whenever a health care facility or a person on behalf of a health care facility makes an acquisition under lease or comparable arrangement or through donation, which would have required review if the acquisition had been by purchase, such acquisition shall be considered a capital expenditure subject to review.

(c) a change in bed capacity of a health care facility which increases or decreases the total number of beds, redistributes beds among various service categories, or relocates such beds from one physical facility or site to another over a 2-year period by more than 10 beds or 10% of the total licensed bed capacity, whichever is less;

(d) health services which are offered in or through a health care facility and which were not offered on a regular basis in or through such health care facility within the 12-month period prior to the time such services would be

offered or the deletion by a health care facility of a service previously offered;

(e) the expansion of a geographic service area of a home health agency.

(19) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

~~(12)~~(20) "Observation bed" ~~is~~ means a bed ~~used~~ occupied for not more than 6 hours by a patient recovering from surgery or other treatment.

(21) "Offer" means the holding out by a health care facility that it can provide specific health services.

~~(13)~~(22) "Outpatient facility--A" means ~~a--physically separate--component--of--a--licensed--hospital--or--a--medical clinic--or--other--establishment--owned--or--operated--by--a licensed--physician--which--has--an--observation--bed--or--beds--and provides--to--patients--not--requiring--hospitalization--the services---of--persons--licensed--to--practice--medicine--or dentistry--in--the--state--of--Montana.--No--patient--may--be--allowed to--remain--in--an--outpatient--facility--for--more--than--6--hours~~ a facility, located in or apart from a hospital, providing, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An out patient facility may have observation beds.

~~(14) "Outpatient facility--B" means a facility operated physically--apart--from--a--hospital,--other--than--a--medical clinic--or--other--establishment--owned--or--operated--by--a licensed--physician,--which--provides--to--ambulatory--patients not--requiring--hospitalization--the--services--of---persons licensed--to--practice--medicine--or--dentistry--in--Montana,--but which--does--not--have--an--observation--bed--or--beds--as--defined--in subsection--(12).~~

(23) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

~~(15)~~(24) "Person" means ~~an~~ any individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

~~(16)~~(25) "Public health center" means a publicly owned facility ~~utilized--by--a--local--health--unit--for--the--provision~~ providing of--public health services, including ~~related public--facilities--such--as~~ laboratories, clinics, and administrative offices ~~operated--in--connection--with--a--public health--center.~~

~~(17)~~(26) "Rehabilitation facility" means a facility ~~providing--community--service~~ which is operated for the primary purpose of assisting in the rehabilitation of disabled persons ~~through--an--integrated--program--under competent--professional---supervision,---including---medical~~

~~services--and--evaluation--and--psychologicaly--socialy--and vocational---services---and----evaluation~~ by providing comprehensive medical evaluations and services; psychological and social services; or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

~~(10)~~(27) "Resident" means a person who is in a long-term care facility ~~as-a-patient-or~~ for intermediate or personal care.

(28) "State plan" means the state medical facility plan provided for in part 4."

Section 2. Section 50-5-103, MCA, is amended to read:

"50-5-103. Rules and standards. (1) The department shall promulgate, and adopt, ~~and-publish~~ rules and minimum standards ~~for---licensure----of----all----hospitals----and hospital-related--facilities~~ for implementation of parts 1 through 4.

(2) ~~Rules-relating-to-buildings--equipment--and--fire and-life-safety-shall-be-covered-by-the-state-building-code.~~ Any facility covered by this chapter shall comply with the state and federal requirements relating to construction, equipment, and fire and life safety.

(3) The department shall extend a reasonable time for compliance with rules for parts 1 through 4 after adoption."

Section 3. Section 50-5-104, MCA, is amended to read:

"50-5-104. Certain exemptions for spiritual healing institution. Parts 1 through 3 and rules and standards adopted by the department may not authorize the supervision, regulation, or control of care or treatment of persons in any home or institution conducted for those who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denomination. However, a license is required and ~~all-other~~ the minimum standards referred to in 50-5-103(2) apply."

Section 4. Section 50-5-105, MCA, is amended to read:

"50-5-105. Discrimination ~~among-patients-of-physicians~~ prohibited. (1) All phases of the operation of a health care facility shall be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, age, marital status, physical or mental handicap, or political ideas.

(2) No person who operates a facility may discriminate among the patients of licensed physicians. The free and confidential professional relationship between a licensed physician and patient shall continue and remain unaffected. ~~Physicians-shall--continue--to--have--direction--over--their patients.~~"

Section 5. Section 50-5-106, MCA, is amended to read:

"50-5-106. ~~Information received confidential.~~ Records and reports required of health care facilities -- confidentiality. Health care facilities shall keep records and make reports as required by the department. Before February 1 of each year, every licensed health care facility shall submit an annual report for the preceding calendar year to the department. The report shall be on forms and contain information specified by the department. Information received by the department or board through reports, ~~inspection~~ inspections, or provisions of parts 1 ~~through 3~~ and 2 may not be disclosed in a way which would identify ~~individuals or facilities, except in a proceeding involving the question of licensure or as required by the federal government for certification or preparation of a state plan~~ patients. Information and statistical reports from health care facilities which are considered necessary by the department for health planning and resource development activities will be made available to the public and the health planning agencies within the state. Applications by health care facilities for certificates of need and any information relevant to review of these applications, pursuant to part 3, shall be accessible to the public."

Section 6. Section 50-5-108, MCA, is amended to read:

"50-5-108. Injunction. The department, on advice of the attorney general, may ~~maintain~~ bring an action for

injunction or other process against any person to restrain or prevent the establishment, conduct, management, or operation of a facility which is ~~endangering health and welfare~~ in violation of any provision of parts 1 or 4 of this chapter."

Section 7. Section 50-5-109, MCA, is amended to read:

"50-5-109. Penalty. A person who violates provisions of parts 1 ~~through 3~~ or 4 is guilty of a misdemeanor. On conviction he shall be fined not more than $100 for the first offense and not more than $300 for each subsequent offense. ~~Each day of a continuing violation after conviction is a separate offense.~~"

Section 8. Section 50-5-201, MCA, is amended to read:

"50-5-201. License requirements. (1) A licensee who contemplates construction of or alteration or addition to a health care facility shall submit plans and specifications to the department for preliminary inspection and approval prior to commencing construction.

~~(1)~~(2) No person may operate a health care facility unless the facility is licensed by the department. Licenses shall be for 1 year unless issued for a shorter period. A license is valid only for the person and premises for which it was issued. A license may not be sold, assigned, or transferred.

~~(2)~~(3) Upon discontinuance of the operation or of

transfer of ownership of a facility, the license must be returned to the department.

~~(3)~~(4) Licenses shall be displayed in a conspicuous place near ~~where patients or residents are admitted~~ the admitting office of the facility."

Section 9. Section 50-5-204, MCA, is amended to read:

"50-5-204. Issuance and renewal of licenses. (1) On receipt of a new or renewal application, the department or its authorized agent shall inspect the facility. If minimum standards are met and the proposed staff is qualified, the department shall issue a license for 1 year. If minimum standards are not met, the department may issue a provisional license for less than 1 year if operation will not result in undue hazard to patients or residents or if the demand for accommodations offered is not met in the community. The minimum standards which home health agencies must meet in order to be licensed shall be as outlined in 42 U.S.C. 1395 x(o), as amended, and in rules implementing it which add minimum standards.

(2) Licensed premises shall be open to inspection, and access to all records shall be granted at all reasonable times."

Section 10. Section 50-5-207, MCA, is amended to read:

"50-5-207. Denial, suspension, or revocation of ~~hospital or hospital related~~ health care facility license ~~or~~

provisional license. ~~(1)~~ The department may deny, suspend, or revoke a ~~hospital or hospital related~~ health care facility license if ~~it finds there has been substantial failure to comply with the provisions of parts 1 through 3~~ any of the following circumstances exist:

(a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.

(b) The staff is insufficient in number or unqualified by lack of training or experience.

(c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.

(d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.

(e) There is cruelty or indifference affecting the welfare of the patients or residents.

(f) There is misappropriation of the property or funds of a patient or resident.

(g) There is conversion of the property of a patient or resident without his consent.

(h) Any provision of parts 1 through 3 is violated.

(2) The department may reduce a license to provisional

status if as a result of an inspection it is determined minimum standards are not being met.

(3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need requirements of part 3."

NEW SECTION. Section 11. Civil penalty -- injunction. (1) A person who violates the terms of [Title 50, chapter 5, part 2,] is subject to a civil penalty not to exceed $1,000. Each day of violation constitutes a separate violation. The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may petition the district court to impose, assess, and recover the civil penalty. Money collected as a civil penalty shall be deposited in the state general fund.

(2) The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may bring an action to enjoin a violation of any provision of [Title 50, chapter 5, part 2], in addition to or exclusive of the remedy in subsection (1).

Section 12. Section 50-5-301, MCA, is amended to read:

"50-5-301. ~~Preliminary---submission---of---plans---for approval.~~ When application is required. ~~(1)--The--department may--adopt--rules--to--require--an--applicant-or-licensee-who~~

~~contemplates-construction-of,-alteration-or--addition--to--a health--care--facility-to-submit-plans-and-specifications-to the-department-for-preliminary-inspection-and-approval-prior to-commencing-construction.~~

~~(2)--Approval-may--be--given--only--if--the--plans--and specifications---conform--to--the--state--or--the--municipal building-code-which--applies--to--the--facility.~~ Unless an application has been submitted to and a certificate of need granted by the department, no person may initiate any of the following:

(1) a new institutional health service as defined in 50-5-101;

(2) any expenditure by or on behalf of a health care facility in excess of $150,000 made in preparation for the offering or development of a new institutional health service and any arrangement or commitment made for financing the offering or development of the new institutional health service. Expenditures made in the preparation for the offering of a new institutional health service shall include expenditures for architectural designs, preliminary plans, working drawings, specifications, studies, and surveys."

Section 13. Section 50-5-302, MCA, is amended to read:

"50-5-302. ~~Form---and---content---of--application--for approval~~ Application and review process. ~~(1)--An--application~~

for--approval--must-be-submitted-to-the-department-in-a-form together-with-information-as-the-department--may--prescribe.

(2)--The-application-shall-include:

(a)--a--narrative--description-of-the-proposed-project;

(b)--the-number-and type-of-beds-and/or-services-to--be provided;

(c)--the-estimated-cost;

(d)--the-source-of-financing;

(e)--the--expected--time-for-completion-of-the-proposed project;-and

(f)--a-simple-line-drawing-showing-major--dimensions-of the-proposed-project. (1) Any person intending to initiate an activity for which a certificate of need is required shall submit a letter of intent to the department. After receipt, the department shall send the applicant a form requiring the submission of information considered necessary by the department to determine if the proposed activity meets the standards in 50-5-304. The form and content of the notification of intent and applications for certificates of need shall be prescribed by rule by the department.

(2) Within 15 calendar days after receipt of the application, the department shall determine whether it contains sufficient information to determine if the proposed activity meets the standards in 50-5-304. If the application is found incomplete, the department shall request additional

information.

(3) After the application has been designated complete, notification must be sent to the applicant and all other affected persons regarding the department's projected review of the application and the review period time schedule. The review period for the application may be no longer than 90 calendar days after the notice is sent unless a longer period is agreed to by the applicant. During the review period, a public hearing may be held if requested by one or more affected persons.

(4) The department shall, after considering all comments received during the review period, issue a certificate of need, with or without conditions, or reject the application. If the department fails to act within the designated period and an extension has not been granted, the failure to act constitutes disapproval of the application. The department shall notify the applicant and affected persons of its decision."

Section 14. Section 50-5-304, MCA, is amended to read:

"50-5-304. Requirements-for-approval Review criteria, required findings, and standards. (1)-No-application-may-be approved-unless-the-action-proposed:

(a)--is-necessary-to-provide-required--health--care--in the-area-to-be-served;

(b)--can--be--economically-accomplished-and-maintained;

and

~~(c) will contribute to the orderly development of adequate and effective health services.~~

~~(2) In making the determinations enumerated in subsection (1), the following shall be considered:~~

~~(a) The compatibility with needs shown in the appropriate state plan provided by those statutes relating to facilities contained in part 4 of this chapter.~~

~~(b) The availability of facilities or services which may serve as alternates or substitutes.~~

~~(c) The need for special equipment and services in the area.~~

~~(d) The possible economies and improvement in services to be anticipated from the operation of combined central services, including but not limited to laboratory, research, radiology, pharmacy, laundry, and purchasing.~~

~~(e) The adequacy of financial resources and sources of future revenues; and~~

~~(f) The availability of sufficient manpower in the several professional disciplines.~~ The department shall by rule promulgate and utilize, as appropriate, specific criteria for reviewing certificate of need applications under this chapter, including but not limited to the following considerations and required findings:

(1) the relationship of the health services being

reviewed to the applicable health systems plan and annual implementation plan developed pursuant to Title XV of the Public Health Service Act, as amended;

(2) the relationship of services reviewed to the long-range development plans, if any, of the person providing or proposing the services;

(3) the need that the population served or to be served by the services has for the services;

(4) the availability of less costly or more effective alternative methods of providing such services;

(5) the immediate and long-term financial feasibility of the proposal as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the health service;

(6) the relationship and financial impact of the services proposed to be provided to the existing health care system of the area in which such services are proposed to be provided;

(7) the availability of resources, including health manpower, management personnel, and funds for capital and operating needs for the provision of services proposed to be provided and the availability of alternative uses of such resources for the provision of other health services;

(8) the relationship, including the organizational relationship, of the health services proposed to be provided

to ancillary or support services;

(9) the special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. Such entities may include medical and other health profession schools, multidisciplinary clinics, and specialty centers.

(10) the special needs and circumstances of health maintenance organizations for which assistance may be provided under Title XIII of the Public Health Service Act. Such needs and circumstances include the needs of and costs to members and projected members of the health maintenance organization in obtaining health services and the potential for a reduction in the use of inpatient care in the community through an extension of preventive health services and the provision of more systematic and comprehensive health services.

(11) the special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages;

(12) in the case of a construction project, the costs and methods of the proposed construction, including the costs and methods of energy provision, and the probable

impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project;

(13) the distance, convenience, cost of transportation, and accessibility of health services for persons who live outside urban areas in relation to the proposal; and

(14) any other criteria, required findings, or requirements for reviewing certificate of need applications cited in the federal regulations found in Title 42, CFR, Part 123, as amended."

Section 15. Section 50-5-305, MCA, is amended to read:

"50-5-305. Period of validity of approved application. ~~An approved application for construction is valid for 1 year from the date of issue but may be extended by the department for a period of 6 months.~~ A certificate of need shall terminate 1 year after the date of issuance unless:

(1) the applicant has commenced construction if the project provides for construction or has incurred an enforceable capital expenditure commitment for projects not involving construction; or

(2) the certificate of need validity period is extended by the department for one additional period of 6 months, upon showing good cause by the applicant for the extension."

Section 16. Section 50-5-306, MCA, is amended to read:

"50-5-306. Right to hearing and appeal. ~~(1)--If--the department--disapproves-an-application-for-construction-of-a facility,-it-shall-notify-the-applicant-of-its--actions--and afford--the--applicant--an--opportunity-to-request-a-hearing before-the-board.~~

~~(2)--When-this-hearing-is-desired,-the-applicant--shall notify--the--department--in-writing-within-15-days-after-the notice-of-disapproval-is-received.~~

~~(3)--If-the-decision--after--hearing--is--adverse,--the applicant--may--appeal--to-the-district-court-as-provided-in Title-2,-chapter-4,-part-7.~~ (1) Any affected person may, for good cause, request the department to reconsider its decision at a public hearing. The department shall grant the request if the affected person submits the request in writing showing good cause as defined in rules adopted by the department and if the request is received by the department within 30 calendar days after the decision is announced. The public hearing to reconsider shall be held, if warranted, within 30 calendar days after its request. The department shall make its final decision and written findings of fact and conclusions of law in support thereof within 45 days after the conclusion of the reconsideration hearing.

(2) An aggrieved applicant or a health systems agency designated pursuant to Title XV of the Public Health Service

Act may appeal the department's final decision to the board by filing a written notice of appeal stating the specific findings of fact and conclusions of law being appealed and the grounds. The notice of appeal must be received by the board within 30 calendar days after formal notice of the department's final decision was issued. The board shall give public notice of the appeal within 10 days, and the hearing shall be held within 30 days after receipt of the notice of appeal.

(3) The scope of the hearing before the board is limited to a review of the record upon which the department made its decision. Within 45 calendar days after the conclusion of the public hearing, the board shall make and issue its decision, supported by written findings of fact and conclusions of law. The board may affirm the department's decision or remand it for further proceedings. The board may reverse or modify the department's decision if the appellant's rights have been prejudiced for any of the reasons found in 2-4-704.

(4) The final decision of the board shall be considered the decision of the department for purposes of an appeal to district court. Any affected person may appeal this decision to the district court as provided in Title 2, chapter 4, part 7.

(5) The department may by rule prescribe in greater

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detail the hearing and appellate procedures."

Section 17. Section 50-5-307, MCA, is amended to read:

"50-5-307. ~~Penalties---for--failure--to--obtain--prior approval~~ Civil penalty -- injunction. ~~Penalties-for--failure to--obtain--prior-approval-of-the-department-are-as-follows:~~

~~(1)--Any-person-who--constructs--any--new--health--care facility--as--defined--in-50-5-101-without-prior-approval-by the-department-is-guilty--of--a--misdemeanor--and--shall--be punished--by--a--fine--of--not-less-than-$1v000-or-more-than $10v000v-the-fine-to-be-deposited-in-the-state-general-fundv and-this-new-facility-is-not-eligible--for--licensure--as--a health-care-facility-as-defined-in-50-5-101.~~

~~(2)--Any--person--who--expandsv--remodelsv-or-alters-an existing-health-care-facility-as-defined-in-50-5-101-without prior-written-approval-by-the--department--is--guilty--of--a misdemeanor-and-shall-be-punished-by-a-fine-of-not-less-than $1v000-or-more-than-$10v000v-the-fine-to-be-deposited-in-the state--general--fund.~~ (1) A person who violates the terms of 59-5-301 is subject to a civil penalty of not less than $1,000 or more than $10,000. Each day of violation constitutes a separate offense. The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may petition the district court to impose, assess, and recover the civil penalty. Money collected as a civil penalty shall

be deposited in the state general fund.

(2) The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may bring an action to enjoin a violation of 50-5-301, in addition to or exclusive of the remedy in subsection (1)."

NEW SECTION. Section 18. Special circumstances. In the event of destruction of any part of a health care facility as a result of fire, storm, civil disturbance, or any act of God, the department may issue a certificate of need for only the replacement of the previously existing facility or portion thereof.

Section 19. Section 50-5-402, MCA, is amended to read:

"50-5-402. Administration of state medical facility plan. The department is the principal state agency for establishing and administering a statewide plan for construction, modernization, alteration, equipment, maintenance, or operation of a ~~hospital, medical, or related~~ health care facility for provision of care, treatment, diagnosis, rehabilitation, training, or related service. This plan is to be known as the state medical facility plan."

Section 20. Section 50-5-404, MCA, is amended to read:

"50-5-404. Duties of department. The department shall:

~~(1)--adopt--necessary--rules--for-the-administration-of~~

~~this part~~

~~(2)~~(1) prescribe minimum standards for the maintenance and operation of ~~hospitals, medical, and related~~ health care facilities receiving federal aid for construction under the state plan;

~~(3)~~(2) inventory existing hospital, medical, and related health care facilities;

~~(4)~~(3) survey the need for construction or alteration of ~~hospitals~~ health care facilities;

~~(5)~~(4) develop and administer a state plan for the construction and alteration of public and other nonprofit ~~hospital, medical, and related~~ health care facilities;

~~(6)~~(5) if desirable, enter into agreements for the utilization of facilities and services of other departments, agencies, and institutions, public or private;

~~(7)~~(6) accept and deposit with the state treasurer and spend any grant ~~, gift, or contribution~~ made to meet costs of carrying out this part;

~~(8)~~(7) prepare and review a construction program in accordance with federal requirements that will provide adequate ~~hospital, medical, and related~~ health care facilities to people in the state providing, as far as possible, for distribution throughout the state to make all types of services reasonably ~~acceptable~~ available to all persons;

~~(9)~~(8) submit to federal agencies state plans, including those for the ~~hospital, medical, and related~~ health care facilities construction program and modifications of it providing for the establishment and operation of ~~hospital, medical, and related~~ health care facilities construction activities in accordance with federal requirements;

~~(10)~~(9) make application to the appropriate federal agency for funds to assist in carrying out the survey and planning activities;

~~(11)~~(10) after approval of a plan by the appropriate federal agency, publish a description in newspapers having general circulation throughout the state and make the plan available upon request to all persons or organizations;

~~(12)~~(11) inspect construction or alteration projects approved by the appropriate federal agency and, if satisfactory, certify that work has been performed on the project or purchases made in accordance with approved plans and specifications and that payment of federal funds is due to the applicant;

~~(13)~~(12) require reports and make inspections and investigations as necessary or required by the federal agency;

~~(14)~~(13) contract with consultants for services which are performed on a part-time or fee-for-service basis not

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involving administrative duties."

Section 21. Section 50-5-405, MCA, is amended to read:

"50-5-405. Contracts with federal agencies. The department may enter into contracts and agreements with agencies of the federal government to secure the benefit of federal programs to provide adequate ~~medical--and--related~~ health care facilities and services."

Section 22. Section 50-5-408, MCA, is amended to read:

"50-5-408. Applications for construction projects. Applications for ~~hospital,-medical,-and-related~~ health care facilities construction projects may be submitted by a state agency, a political subdivision, or by any public or nonprofit agency authorized to construct and operate a ~~hospital,-medical,-or-related~~ health care facility."

Section 23. Section 50-5-411, MCA, is amended to read:

"50-5-411. Consolidated applications. (1) Boards of county commissioners of two or more counties may submit a consolidated application for a single ~~hospital,-medical~~ health care facility, or health center serving each of the counties included in the application.

(2) Any statutes investing counties with powers to construct, maintain, and operate ~~hospitals-or-medical~~ health care facilities directly or by lease or contract may be utilized for this joint action.

(3) All statutes governing submission of questions of

establishing a ~~hospital-or--medical~~ health care facility, ~~hospital--or--medical~~ health care facility construction, issuance of bonds, or method of operation, and requiring a majority vote of taxpayers on the questions shall apply.

(4) Concurrent and joint action of two or more counties and approval by a majority of the voters in each county is required to authorize the issuance of bonds, construction, and contracts under a consolidated plan."

Section 24. Saving clause. This act does not affect certificate of need applications received and declared complete or granted by the department before the effective date of this act.

Section 25. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 26. Codification. (1) It is intended that section 11 of this act be codified as an integral part of Title 50, chapter 5, part 2; and the provisions contained in Title 50, chapter 5, parts 1 through 4, apply to section 11 of this act.

(2) It is intended that section 18 of this act be codified as an integral part of Title 50, chapter 5, part 3;

and the provisions contained in Title 50, chapter 5, parts 1 through 4, apply to section 18 of this act.

Section 27. Repealer. Sections 50-5-102, 50-5-205, 50-5-206, 50-5-209, 50-5-303, 50-5-401, 50-5-412, and 50-7-101 through 50-7-309, MCA, are repealed.

-End-

STATE OF MONTANA

REQUEST NO. 16-79

FISCAL NOTE

Form BD-15

In compliance with a written request received January 16, 19 79, there is hereby submitted a Fiscal Note for SB 100 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

Description of Proposed Legislation

An act to revise the laws relating to health care facilities.

Assumption

One additional FTE position is needed to handle the increased workload due to the proposed legislation.

Fiscal Impact

	FY '80	FY '81
Additional revenues due to proposed legislation	$ -0-	$ -0-
Less: Additional expenditures due to proposed legislation		
Personal services	24,332	25,790
Operating expenses	49,130	48,472
Equipment	800	-0-
	74,262	74,262
Net additional expenditures due to proposed legislation	$74,262	$74,262

Funding Information

General Fund	$18,565	$18,565
Federal and Private Revenue Fund	55,697	55,697
	$74,262	$74,262

Note: Spending authority has been requested in the Executive Budget in the above amounts.

Richard L. Drumheller

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1/22/79

MINUTES OF THE MEETING

PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE

January 19, 1979

The fourth meeting of the Public Health, Welfare and Safety Committee met January 19 in Room 410 of the State Capitol Building at 1:00 p.m.

ROLL CALL: All Committee members were present except Senator Palmer, who arrived later in the meeting.

CONSIDERATION OF HOUSE BILL 40: House Bill 40 is an act to provide for a senior citizen representative on the Board of Nursing Home Administrators.

Representative Jerry Metcalf, House District 31 in Helena, sponsored House Bill 40 at the request of the National Retired Teachers' Association and the American Association of Retired Persons. Representative Metcalf stated that the bill merely provides that one person 60 years of age or older be allowed to sit on the Board of Nursing Home Administrators. He stated that the Board is in favor of this bill. The senior citizen selected would be from nominations submitted by the Governor's Commission on Aging. He then introduced Genevieve S. Adair, a member of the joint state legislative committee with the National Retired Teachers' Association and the American Association of Retired Persons.

Genevieve Adair spoke in favor of House Bill 40. See Attachment "A."

No one spoke in opposition to House Bill 40.

Chairman Olson then asked the Committee members if they had any questions. Senator Himsl questioned setting the age at 60 since the AARP has a designation of 55 or over for a senior citizen. He felt that to amend the bill to read "age 55" would be a more equitable age since that is the designation of a senior citizen. He also asked if the senior citizen had to belong to such an organization to be eligible. Representative Metcalf replied that anyone age 60 or over would be eligible. The nominees would come from the Governor's Commission on Aging. Representative Metcalf said the senior citizens' groups decided it would be best to have the Governor's Commission on Aging do the selection rather than fighting among themselves.

The hearing on House Bill 40 was closed at 1:10 p.m.

CONSIDERATION OF SENATE BILL 100: Senate Bill 100, by request of the Department of Health and Environmental Sciences, is an act to revise the laws relating to health care facilities, defining health care facilities to include among other entities home health agencies and adult day-care centers and eliminating existing laws dealing with home health agencies; providing for a certificate of need and for review of applications for certificates of need and appeal procedures, providing guidelines for denial, suspension, or revocation of health care facility licenses.

Witnesses supporting Senate Bill 100:

George M. Fenner, Department of Health & Environmental Sciences
Dr. John W. McMahon, Montana Medical Association
Chad Smith, Montana Hospital Association
William E. Leary, Montana Hospital Association
Ralph Gildroy, Montana Health Systems Agency, Inc.
Sharon Dieziger, Montana Nurses' Association
Glen Drake, Montana Nursing Homes' Association
David Lackman, Montana Health Association
Arthur Knight, Department of Health and Environmental Sciences
Rita Ann Shuhy, State Board of Health
William Spoja, State Board of Health
Barbara Kirscher, Montana Health Systems Agency
Beverly Gibson, Montana Association of Counties
Charles R. Shields, State Board of Health & Environmental Sciences
Dr. John McGregor, State Board of Health
John W. Bartlett, Board of Health

Senator Norman, sponsor of Senate Bill 100, said this is a Certificate of Need bill. It is not new law, but it is amendment of current law. The Certificate of Need is a composite introduced by the Federal government. If a hospital is marginal, it is quite obvious that if another hospital is built in the same area it would run at less than capacity. Thus the hospital would have to charge more. The Certificate of Need is to help prevent this situation from happening to keep health care costs down. This same theory applies to nursing homes, adult day-care centers, etc. This bill does not apply to the doctor in his office or clinic. This bill would broaden the coverage and include home health facilities and adult foster homes. Fifty thousand dollars was used as the previous amount for a Certificate of Need. This amount is raised to $150,000 in this bill. Senator Norman stated that there are various estimates from $19,000,000 to $26,000,000 worth of health department funds which are spent throughout the state. The assumption is made that these funds are in jeopardy as most of these are federal funds unless we bring our Certificate of Need law up to Federal standards. Senator Norman asked Mr. Fenner to speak in behalf of the bill.

George M. Fenner, Department of Health and Environmental Sciences, spoke in support of Senate Bill 100 with amendments. See Attachment "B."

Bill Leiker, Department of Social and Rehabilitative Services, stated that they support this bill as they believe it will encourage the proper use of our health care facilities.

Dr. John McMahon, Montana Medical Association, stated that the Montana Medical Association is supportive of this bill. However, they do have some reservations. The Association is cautious about health planning. Examples of inappropriate ultimate decisions continue. It is their hope that some of the clarification and other things that have been proposed with the present law will address this problem. This bill would also give the right to redress if a hearing does not find in favor of a particular problem. The Association offered two amendments. See Attachment "C."

Chad Smith, Montana Hospital Association, spoke in favor of Senate Bill 100 with amendments. See Attachment "D." He stated that the association would like the words "for good cause" deleted because this would require a hearing before the hearing. He stated that if something needs to be reviewed, it should be guaranteed as a matter of right. If we are going to condition it on "good cause," we are going to afford the Commission the right to deny somebody a hearing. The amendment in Attachment "D", item 4, is recommended to provide for an orderly proceeding -- the requirement that there be a record. Mr. Smith stated that at some level of this proceeding there will have to be a record made that will allow for a review to determine whether or not the department or the board has acted arbitrarily. Otherwise, you do not have anything to take to court. The amendment requested in Item 5 of Attachment "D" requires the Board upon request of any interested person to hear and receive written briefs. When you get to the board you do not have a full hearing again. Mr. Smith stated that unless the parties have the opportunity to argue orally they won't be able to emphasize the errors they feel are made. The Hospital Association would like the deletion of the sentence indicated in Item 6 of Attachment "D" because they feel that sentence is fraught with a number of dangers. Rules should be uniformly made. Mr. Smith said they feel that they are not going to have a due process in decisions in this matter. He stated that there is one hospital that has had some bad experiences in order to attempt to present its case and the hospitals want to have an opportunity for full review.

William E. Leary, Montana Hospital Association, spoke in favor of Senate Bill 100 with amendments. See Attachment "E."

Ralph Gildroy, Montana Health Systems Agency, Inc., spoke in favor of Senate Bill 100. See Attachment "F."

Sharon Dieziger, Montana Nurses' Association, spoke in favor of Senate Bill 100. See Attachment "G."

Glen Drake, Montana Nursing Homes' Association, stated that they support Senate Bill 100 and also recommend the amendments proposed by the Hospital Association except that they take no position on the removal of the clause "with or without conditions" under Section 13, subparagraph 4 on page 20. They recommend deletion of Line 14 through 16 on page 20 because it would be unworkable with the way the bill is written.

There were no opponents to Senate Bill 100.

Senator Norman stated that after removing anything that is damaging to their organization that each organization supports Senate Bill 100. He stated that the Committee cannot adopt all of the amendments, but it certainly will try to give consideration to all of them. He cautioned the Committee to watch and make sure that the bill is not contradictory when it is amended.

Chairman Olson asked the Committee members if they had any questions. Senator Lensink asked if the various parties could present the Committee with their proposed amendments. Chairman Olson said that the amendments would be given to Dennis Taylor who would work them up and have them ready for a working session. Senator Ryan asked Mr. Fenner if his department consulted with any of the other organizations present when they were drafting Senate Bill 100. Mr. Fenner said that there is a list of the task force that helped draft this legislation attached to the back of his testimony. Senator Himsl stated that he understands that the Department of Health, Education and Welfare has increased some of the standards for Certificate of Need and asked Mr. Fenner if those standards are covered on pages 1 and 2 of the bill. Mr. Fenner replied that in summary it shows what is now covered and what is mandated. Senator Himsl then asked if the additional requirements are items 1, 2, 3 and 4. Mr. Fenner replied that that is all we have to do to conform with HEW and added that there are changes in the bill which do not affect compliance. Senator Himsl asked if day-care centers had to be part of the bill. Mr. Fenner said they do not; but, if there is a payment made for adult day-care center, the department is in favor of it. Senator Ryan asked about a cost breakdown. Chairman Olson said that he would order a fiscal impact.

Chairman Olson closed the hearing on Senate Bill 100.

ACTION ON SENATE BILL 100: Chairman Olson said that there will be a working hearing to go over all the proposed amendments to Senate Bill 100 at 1:00 p.m. on Friday, February 2.

ANNOUNCEMENTS: Senate Bill 61 will be discussed and amended at the working session on February 2. Chairman Olson announced that the Committee would meet on Monday, January 22, 1979, at 1:00 p.m. to hear Senate Bills 125 and 127.

ADJOURNMENT: With no further business being discussed, the meeting was adjourned at 2:30 p.m.

S A Olson

S. A. OLSON, CHAIRMAN

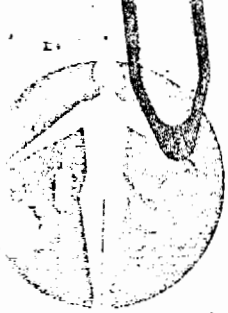
ROLL CALL

PUBLIC HEALTH COMMITTEE

46th LEGISLATIVE SESSION - - 1979 Date _____

NAME	PRESENT	ABSENT	EXCUSED
Olson, S. A., Chairman	✓		
Rasmussen, A. T., V. Chr.	✓		
Himsl, Matt V.	✓		
Lensink, Everett R.	✓		
Norman, Bill	✓		
Palmer, Bob		✓	
Ryan, Patrick L.	✓		

Each day attach to minutes.



Department of Health and Environmental Sciences
STATE OF MONTANA HELENA, MONTANA 59601

A. C. Knight, M.D., F.C.C.P.
Director

George M. Fenner
January 19, 1979

Mr. Chairman and members of the Senate Public Health, Welfare and Safety Committee. For the record, I am George Fenner, Administrator of the Division of Hospital and Medical Facilities for the Department of Health and Environmental Sciences, and responsible for administering the Certificate of Need and Health facility Licensure and Certification programs.

I would like to present to you testimony supporting SB-100 which offers amendments to Title 50 Chapter 5 MCA.

Many of the amendments offered in SB-100 have been drafted to bring our present law into compliance with the Federal guideline for PL 93-641, the National Health Planning and Resource Development Act of 1974. The Act requires all states to have in place by September, 1980 a Certificate of Need program acceptable to the Secretary of HEW.

Amendments which we are offering to bring our present statute into compliance are:

1. Definitions of health care facilities covered by licensure and Certificate of Need have been expanded to include kidney disease treatment centers, ambulatory surgical centers, health maintenance organizations, and the definition of hospital has been revised to include psychiatric and tuberculosis hospitals.
2. The activities requiring Certificate of Need review have been expanded to include any construction, development or establishment of a new health care facility or service; the relocation

or redistribution of beds within a health care facility of 10 beds or 10% of the licensed bed capacity over a two year period; any predevelopment activities in excess of $150,000; and any arrangements or commitments for financing a project. Predevelopment activities are defined in the proposed amendments and do not include site acquisition.

3. Various time lines within the review process have been expanded to meet the Federal requirements and also to make the review system more responsive to the applicants needs.
4. The opportunity to request a hearing before the Department for reconsideration of the Department's decision has been included. This amendment is so written that any person who would be affected by the project may request this hearing.

These proposed amendments go beyond the Federal requirements due to the Department's wish to strengthen our Certificate of Need Law and to address some problems which were identified during the recodification of our present Law. One amendment requests that the penalty for failure to obtain a Certificate of Need be changed from a criminal penalty to a civil penalty thus making our enforcement policy more effective and easier to administer. Definitions have been revised to make them more applicable to our present health care system and because of the present emphasis on alternative systems for long-term care we have requested permission to cover Adult Day Care Centers. We are seeking authority to expand our present decision making authority to include "approval with conditions" thus allowing for a more flexible review system and to prevent unnecessary delay and additional cost to the project. These amendements request the repeal of Title 50, Chapter 7, which places

Home Health Agencies under the licensure and Certificate of Need regulations of the Department and incorporates them into the proposed amendments. Authority to promulgate rules to implement the Certificate of Need program are also included with SB-100. We especially desire this authority in the application procedure section, review criteria section and the hearing and appeal section.

Section C of PL 93-641 states the Secretary may not enter into any contracts under the Public Health Service Act, Community Mental Health Centers Act or the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 for the development and expansion or support of health resources with a state if the state does not have an acceptable Certificate of Need program in place by September, 1980.

According to figures provided to us by the Region VIII Office of DHEW, these appropriations amounted to approximately 6.2 million dollars in FY'77. According to our estimations this dollar figure has risen considerably in 1978-79. However, we do not have an accurate figure to provide you at this time. It should be emphasized that all of these funds except for state administrative costs are passed through to local government.

I wish to thank the Committee for this opportunity to testify in support of SB-100. I urge a do pass recommendation from this Committee.

The Department of Health and Environmental Sciences, which drafted this bill, and Senator Norman, who sponsored the bill, presented the following amendment:

Page 13, line 15, after the word patients and before the word information, insert "A department employee who discloses information which would identify a patient shall be dismissed from employment and subject to the provision of 45-401, unless the disclosure was authorized in writing by the patient, his guardian, or his agent."

CERTIFICATE OF NEED SUMMARY

Type of Facility	Covered by P.L. 93-641	Covered by Current Montana C/N Laws	Covered by Proposed Montana C/N Law
Hospitals			
General	X	X	X
Psychiatric	X		X
Tuberculosis	X		X
Long Term Care Facilities			
Skilled nursing care	X	X	X
Intermediate care	X	X	X
Personal care		X	X
Adult Day Care Centers			X
Kidney Disease Treatment Centers	X		X
Ambulatory Surgical Facilities	X		X
Health Maintenance Organizations	X		X
Outpatient Facilities		X	X
Mental Health & Mental Retardation Centers		X	X
Rehabilitation Facilities		X	X
Public Health Centers		X	X
Infirmaries		X	X
Alcohol & Drug Dependency Centers		X	X
Home Health Agencies		X	X
Half-way Houses		X	

Health Planning and Resource Development Bureau
Montana Department of Health and Environmental Sciences

CERTIFICATE OF NEED SUMMARY (continued)

P.L. 93-641	Current Montana C/N Laws	Proposed Montana C/N Law
Any construction, development or other establishment of a health care facility which did not previously exist.	Erection, expansion, remodeling, alteration of a new or existing health care facility involving capital expenditures of $50,000 or more.	Same as requirements for P.L. 93-641.
Any project involving a capital expenditure of $150,000 or lesser amount as determined by state (applies to lease or donation of facility or equipment amounting to $150,000).	Same as above using capital expenditure figure of $50,000. Does not cover lease or donations. Purchase of therapeutic or diagnostic equipment in a 12-month period at a cost exceeding 2% of facility's total operating cost or exceeding $10,000, whichever is larger.	Raises capital expenditure figure to $150,000 and includes lease or donation of this amount.
Any increase, relocation or redistribution of bed capacity of a facility of 10 beds or 10% of total bed capacity of a facility over a two-year period.	Any increase or decrease of bed capacity of a facility of 10 beds or 10% of licensed bed capacity of a facility.	Any increase, decrease, relocation or redistribution of bed capacity of a facility of 10 beds or 10% of total bed capacity of a facility over a two-year period.
Any addition of a health service not offered by a facility during the last year.	Any change in service within a 12-month period.	Any addition or deletion of a health service within a 12-month period.
Predevelopment activities in excess of $150,000 or lesser amount as determined by state and all arrangements and commitments for financing a project.		Same as P.L. 93-641 using figure in excess of $150,000.

Additional features of the proposed amendments to Montana's C/N Law

Review criteria have been expanded to include the criteria in P.L. 93-641.

The public hearing and appeals processes have been revised to comply with the time requirements in P.L. 93-641, and now allow any "affected person" remedy from the Department's decision by means of a Reconsideration Public Hearing before the Department of Health & Environmental Sciences.

Penalty has been changed from criminal to civil proceedings, and the fine will be calculated on the basis of each day of violation.

Gives the state agency the authority to approve, with conditions, in addition to approve or disapprove a proposal.

April, 1978

MEMBERS OF CERTIFICATE OF NEED TASK FORCE

Montana Nursing Home Association
Elsie Spencer
North Valley Nursing Home
Stevensville, Montana 59870

Montana Health Systems Agency
Bert Glueckert
Montana Health Systems Agency
32' Fuller Avenue
Helena, Montana 59601

Montana Hospital Association
Ken Rutledge
Montana Hospital Association
P.O. Box 5119
Helena, Montana 59601

Legislative Council
Dennis Taylor
Legislative Council
State Capitol
Helena, Montana 59601

Consumer
Ed Morse
Denton
Montana 59430

Montana Medical Association
Dr. Adron Medley
2225 Eleventh Avenue
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Montana Home Health Agency
Janet Kovalchik
Montana Home Health Agency
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Janie Kerr
Department of Institutions
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Department of Social and
Rehabilitation Services
Gary Blewett
Department of Social and
Rehabilitative Services
Capitol Station
Helena, Montana 59601

Montana Nurses Association
Shirley Thennis
510 Dearborn Avenue
Helena, Montana 59601

These members were appointed by their respective organization, agency or state department to serve on the Task Force.

The proposed amendments developed by the Department of Health and Environmental Sciences with assistance from this Task Force have not been endorsed by any of the represented agencies nor the members of the Task Force.

ATTACHMENT "C"

AMENDMENTS TO SB 100

Amendment No. 1. At page 8, line 21, insert after the word "less" the following: "A change in bed capacity shall not be considered a new institutional health service if the health care facility utilizes the swing-bed concept."

Amendment No. 2. At page 12, line 19, after the word "may" insert the word "unreasonably".

Amendment No. 3. At page 13, line 15, after the word "patients." insert the following: "Facilities and individual providers of health care services may not be identified except in a proceeding involving the question of licensure or as required by the federal government for certification or preparation of a state plan. Any disclosure of specific patient information in possession of the Department or its staff and released by a staff member without a properly signed authorization to do so by the patient, or by his or her guardian or by an individual holding power of attorney to do business for the patient, will subject such staff member to immediate dismissal, all other legal sanctions."

Amendment No. 4. At page 22, line 9, after the word "costly" insert the words "quality equivalent".

Amendment No. 5. Insert after Section 27, the following new section: "Section 28. Adjustment of $150,000.00 limit. (1) From time to time the $150,000.00 limit set forth in Section 1(18)(b) and Section 12(2) shall be changed according to and to the extent of changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items, 1979 = 100, compiled by the Bureau of Labor Statistics, United States Department of Labor, and hereafter referred to as the index. The index for December of the year preceding the year in which this chapter becomes effective is the reference base index."

(2) The designated dollar amount shall change on July 1, of each even numbered year if the percentage of change, calculated to the nearest whole percentage point, between the index at the end of the preceding year and the reference base index is 10 percent or more.

(3) If the index is revised, the percentage of change pursuant to this section shall be calculated on the basis of the revised index. If a revision of the index changes the reference base index, a revised reference base index shall be determined by multiplying the reference base index then applicable by the rebasing factor furnished by the Bureau of Labor Statistics.

(4) The Department shall adopt a rule announcing each year in which the dollar amounts are to change, the changes in the dollar amounts required by subsection (2). The Department shall adopt such other rules as are necessary to carry out the provisions of this section.

The Department of Health and Environmental Sciences, which drafted this bill, and Senator Norman, who sponsored the bill, presented the following amendment:

Page 13, line 15, after the word patients and before the word information, insert "A department employee who discloses information which would identify a patient shall be dismissed from employment and subject to the provision of 45-401, unless the disclosure was authorized in writing by the patient, his guardian, or his agent."

ATTACMENT "D"

SENATE BILL 100

MR. CHAIRMAN: I move to amend Senate Bill 100 as follows:

1. On page 25 in lines 11 and 12, by deleting the following words and punctuation: ", for good cause,".

2. On page 25 in lines 15 and 16, by deleting the following words: "showing good cause as defined in rules adopted by the department".

3. On page 25 in lines 18 and 19, by deleting the following words and punctuation: ", if warranted,".

4. On page 25 in line 23, by adding the following after the period: "The hearing shall be conducted in accordance with sections 2-4-601 through 2-4-623, MCA."

5. On page 26 in line 12, by inserting the following sentence after the period: "The board, upon request of any interested person, shall hear oral argument and receive written briefs."

6. On page 26 in line 25 and on page 27 in line 1, by deleting all of said lines.

ATTACHMENT "E"

Montana Hospital Association

(406) 442-1911 · P. O. BOX 5119 · HELENA, MONTANA 59601

January 19, 1979

TESTIMONY IN SUPPORT OF SENATE BILL 100 - "REVISIONS OF LAWS AND AMENDMENTS TO CERTIFICATE OF NEED FOR HEALTH CARE FACILITIES"

Chairman Olson, Members of the Senate Public Health, Welfare and Safety Committee:

For the record, my name is William E. Leary, Executive Vice President of the Montana Hospital Association. I am appearing here today in support of the passage of Senate Bill 100 but will offer some suggested amendments to improve this good bill and to make it an excellent law which should serve the needs of Montana, the health care facilities and the people we all serve.

I would like to take this opportunity to introduce to you Ken Rutledge, the Director of Planning and Development for the Montana Hospital Association. Ken was selected last summer to serve on a special task force with staff of the State Department of Health and Environmental Sciences to develop the amendments to Montana's Certificate of Need law to bring it into general compliance with the federal regulations and guidelines as proposed by HEW. On behalf of the Montana Hospital Association, I would like to publicly express our appreciation to George Fenner, Barbara Crebo and the other staff members of the state department for the opportunity of working with them on this task force and through reason, discussion and compromise present to you a well studied and researched bill.

Ken is here today to be available to the committee to respond to any questions regarding the technicalities of the federal laws and regulations as they relate to the Montana Certificate of Need law and the reasons for our suggested amendments.

The 60 member hospitals of the Montana Hospital Association, along with the 29 hospital-nursing home combination units in our Association, have a longstanding history of supporting health care planning in Montana. We do support effective

ATTACHMENT "F"

Montana Health Systems Agency, Inc.

324 Fuller Avenue
Helena, Montana 59601

(406) 443-5965

Ralph Gildroy
Executive Director

Testimony in Support of Senate Bill 100,

Certificate of Need Law

The Montana Health Systems Agency supports a Certificate of Need Law that meets the minimum Federal requirements for the review of New Institutional Health Services.

During its second year of operation, August 23, 1977 to August 22, 1978, the Health Systems Agency reviewed forty-four proposals subject to the existing Certificate of Need Law. Those proposals totaled $24,285,896. Of this total amount, $4,410,000 were recommended for disapproval.

The staff of the Health Systems Agency was part of a Certificate of Need Task Force in the development of the initial draft of Senate Bill 100. In the staff analysis of the bill are noted the following:

The procedures and criteria for Certificate of Need or the review of New Institutional Health Services are synonymous, thus bettering the review process.

It is anticipated that the Federal Regulations of the Social Security Act, Section 1122, will be modified to follow the same procedures and criteria. This will be an added improvement.

Due to the revision of the minimum reviewable capital expenditure from $50,000 to $150,000, the number of reviews will be reduced. The $150,000 figure is a better representation of a reviewable expenditure in light of the inflations over the past five years.

Senate Bill 100 provides for review of establishment of Health Maintenance Organizations (HMOs). This review is not included in the existing Certificate of Need Law. This inclusion is one of the minimum Federal requirements.

The individual Certificate of Need for Home Health Agencies is included in the State Certificate of Need as indicated in Senate Bill 100.

Licensing requirements for health care facilities are consolidated in Senate Bill 100. At the present time, these requirements are found in numerous sections of the revised codes of Montana. The consolidation of these requirements will simplify any considerations of licensing requirements.

Senate Bill 100 allows for the promulgation of rules, by the Department of Health and Environmental Sciences, to implement the State Certificate of Need. This capability is not extant in the present Certificate of Need. The Montana Health Systems Agency hopes to work closely with the Department of Health and Environmental Sciences in the establishment of these rules.

Senate Bill 100 expands and clarifies the hearing procedures, in particular for those aggrieved applicants and affected persons where good cause is demonstrated.

Sanctions or penalties for facilities proceeding in violation of Certificate of Need Law are better described.

Procedures are provided for expeditious handling of special circumstances (fire, storm, civil disturbance, act of God) which require Certificate of Need application.

Guidelines for the State Medical Facilities Plan are outlined in Senate Bill 100. This plan will be one of the criteria upon which Certificate of Need decisions are based.

In view of the above analyses, and the need of a State Certificate of Need Law to insure receipt of certain Federal health monies, the Montana Health Systems Agency supports Senate Bill 100, the Montana Certificate of Need Law.

Ralph Gildroy

RALPH GILDROY
Executive Director
Montana Health Systems Agency, Inc.

RG/gr

ATTACHMENT "G"

Montana Nurses' Association

1716 NINTH AVENUE (406) 442-6710

P.O. BOX 5718 • HELENA, MONTANA 59601

January 19, 1979

SENATE BILL 100 - Certificate of Need

My name is Sharon Dieziger and I represent the Montana Nurses' Association. I wish to speak in support of Senate Bill 100.

Health Care and the entire Health Care Delivery System have surely become a controversial issue in the past few years and rightly so. Controversial in respect to poor planning and higher costs.

Consumers in our state and nationwide are no longer willing to sit back and quietly accept what has happened to them in the escalation of skyrocketing costs and an unorganized health care system.

Sound planning is essential to any basic program. The Certificate of Need Law demands that all of us involved in health care and the delivery of health care stop and look - stop and plan. It creates a method for consumers, providers and facility administrators to talk and plan and share in a common goal of providing health services in an economical manner for their communities.

The Bureau of Health Planning Resource Development and the Montana Health Systems Agency have worked together toward this reality. They provide expertise and consultation to communities to assist them in sound planning and to proceed in a framework in which there can be maximum community and grass roots input under Certificate of Need.

It certainly behooves us all to stand behind and support health planning laws.

Equal access to quality care at a reasonable cost is the American Dream. In Montana with our wide geographic state the dream becomes a night mare.

The passage of S.B. 100 is absolutely essential if Montana is to proceed in successful health planning. With a sound certificate of need law intact we can avoid the poor planning and abuses of the past. The Montana Nurses Association applauds the revisions of the review criteria which address availability, accessibility, continuity, cost improvement and quality care. These are the issues that are so vital to our health care system.

The Certificate of Need is the vital ingredient to PL 93-641. I have worked with the state agency and the MHSA as a representative of the Nurses Association for the past several years. I firmly believe that this law is the States last chance to prove that they can control their own destiny. If we fail to bring our present Certificate of Need law into compliance with the Federal Guidelines, the Federal Government will assume the authority to plan health care for Montana citizens. I respectfully request that you give a unanimous 'do pass' to SB 100 and thank you for this opportunity to present testimony on this vital issue.

Senate Bill No. 100 Revision of laws relating to health care facilities

Senate Health Committee Room 410 1:00 P.M. January 19, 1979

I am David Lackman , lobbyist for the Montana Health Association , Ph.D. in the Medical Sciences . I am testifying in support of Senate Bill 100. The application of the fruits of research in ~~the~~ medical sciences to prevention, diagnosis and treatment of disease has been the thrust of my professional career . Concomitantly , I have been concerned with our contribution to the rising costs of medical care. Anything which promises to slow down inflation in these costs , we are for. The certificate-of-need portions of the bill are especially applicable here. The revisions of the laws governing health care facilities appear to be well considered ; and are amended consistent with Federal Codes and regulations. This is a good bill - we urge its adoption .

Ralph Childers

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
REGION VIII
FEDERAL OFFICE BUILDING
19TH AND STOUT STREETS
DENVER, COLORADO 80202

JAN 17 1979

PUBLIC HEALTH SERVICE

Arthur Knight, M.D., Director
Department of Health and
Environmental Sciences
Cogswell Building
Helena, Montana 59601

JAN 19 1979

Dear Dr. Knight:

Members of my staff, while in Montana last week, were given a copy of the bill to be introduced by request of the Department into the 46th Legislature covering amendments to Montana's Certificate of Need Act. We have reviewed this draft bill and would like to make the following comments.

If the bill is adopted in its present form, then we are of the opinion that the program will have the necessary authority, coverage, thresholds, and enforcement to be satisfactory to the Secretary, HEW. A final review of the program will occur after legislative action and Department rulemaking. This review, which will be done in concert with headquarters, will decide if the program is satisfactory. Most, perhaps all of the following items, can be accomplished through rulemaking per 50-5-103. This would of course eliminate the need to revise the draft bill, and requiring the legislature to consider these issues. The decision how to do this should properly be yours.

The regulations at Section 123.404(c) requires dissemination and publication of scope of coverage as set forth in 123.404(a) and (b) prior to initiating reviews of new institutional health services under this program. In addition, prior to adoption of procedures and criteria, (see Section 123.406(b)), the State Agency should give interested persons an opportunity to offer written comments on such procedures and criteria. There is also a distribution and publication requirement set forth in Sections 123.406(b) (1) and (2).

Section 123.405(a) requires the program to provide four assurances. These must be clearly set forth.

In addition, Sections 123.410 and 123.411 have required findings for inpatient facilities and health maintenance organizations. These must also be clearly set forth.

(12) Preparation and publication, at least annually, of reports by the State Agency of the reviews being conducted (including a statement concerning the status of each such review) and of the reviews completed by the agency since the publication of the last report and a general statement of the findings and decisions made in the course of such reviews.

If the State Agency wishes to seek an exception of the requirements of Section 123.407 then it should follow the exception process as set forth in Section 123.408.

If you have any questions regarding this letter, please contact your Project Officer, Nick Kelly, at (303) 837-5944.

Sincerely yours,

Abel Garcia Ossorio, MD

ACTING FOR:

Hilary H. Connor, M.D.
Regional Health Administrator

NAME: John W. McMahon M.D. DATE: 1-19-79

ADDRESS: 2225 11th Ave Helena 59601

PHONE: 442-0671

REPRESENTING WHOM? Montana Medical Assoc.

APPEARING ON WHICH PROPOSAL: SB 100

DO YOU: SUPPORT? ✓ AMEND? ✓ OPPOSE? _____

COMMENTS: We are cautious about health planning. Examples of inappropriate ultimate decisions continue. It would be our hope that the present proposal will ~~not be~~ streamlined the process enough to permit amendment any decisions which may ultimately be good politically, but poor from a cost effective standpoint.

Oppose

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: CHAD SMITH DATE: 1-19-78

ADDRESS: Box 604

PHONE: 442-2980

REPRESENTING WHOM? Mont Hosp Assn

APPEARING ON WHICH PROPOSAL: SB 100

DO YOU: SUPPORT? _____ AMEND? X OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: William E. Leary DATE: 1/19/09

ADDRESS: Montana Hospital Association

PHONE: 442-1911

REPRESENTING WHOM? Montana Hospitals

APPEARING ON WHICH PROPOSAL: SB 100

DO YOU: SUPPORT? ✓ AMEND? ✓ OPPOSE? _____

COMMENTS: Attached.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: A C Knight MD. DATE: 1-19-79

ADDRESS: 721 2nd St Helena Mont

PHONE: 449 2544

REPRESENTING WHOM? Dept Health

APPEARING ON WHICH PROPOSAL: Senate Bill 100

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: This bill is the highest priority of the State Health Dept.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Rita Ann Hucby DATE: 1-18-79

ADDRESS: 1701 Chateau

PHONE: 443 1398

REPRESENTING WHOM? State Board of Health

APPEARING ON WHICH PROPOSAL: SB 100

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: [illegible] DATE: 1/19/79

ADDRESS: [illegible]

PHONE: _____

REPRESENTING WHOM? Bd of Health

APPEARING ON WHICH PROPOSAL: SB 100

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: Brings Montana land use
Law into line with fed. requirements

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Barbara Kinscher DATE: 1/19/79

ADDRESS: Box 338 Sidney, MT 59270

PHONE: 482-3374

REPRESENTING WHOM? Mont. Health Systems Agency, Eastern Subarea

APPEARING ON WHICH PROPOSAL: S.B 110

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS:

a cmte inclusive Certificat of Need law
in compliance with federal standards
is essential to the operations of our
planning and review functions under
Public Health Law 93-641.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Beverly Gibson DATE: 1-19-79

ADDRESS: Helena

PHONE: 442-5209

REPRESENTING WHOM? Mt. Assoc. of Counties

APPEARING ON WHICH PROPOSAL: SB 100

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: (Herb R.) Kelly DATE: 1-17-77

ADDRESS: 1935 W. Central - Wichita

PHONE: 943-7298

REPRESENTING WHOM? Ks. Bd. of Health & E's

APPEARING ON WHICH PROPOSAL: S.B. 100

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Dr John McGrosh DATE: 1-1979

ADDRESS: 1601 4th Ave So Great Falls

PHONE: 453-2180

REPRESENTING WHOM? State Board of Health

APPEARING ON WHICH PROPOSAL: S.B. 100

DO YOU: SUPPORT? yes AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Jakub Battitt DATE: 1/17/97

ADDRESS: Helena, Mont.

PHONE: 443-2167

REPRESENTING WHOM? Board of Health

APPEARING ON WHICH PROPOSAL: SB 160

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: Needle Exchange is in Compliance with federal Guidelines

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

DATE _____

COMMITTEE ON _____ BILL NO. _____

VISITOR'S REGISTER

NAME	REPRESENTING	Check One: Support	Oppo
J. Drew Ellis	Montana Medical Assn.		
[illegible]	Montana Health Systems Agency	✓	
W. A. Ilse	DHES	✓	
William Leary	Montana Hospital Assn.	✓	
L. D. Nichols, M.D.	Montana - Dakota CPSR	✓	
[illegible]	" " "	✓	
[illegible]	MRTH - AHRP	HB40	
JERRY METCALF	House Dist 31	HB40	
[illegible]	Montana Assn. of Comm. Health Agencies	SB 100	
[illegible]	Hospice Dept.	SB100	
[illegible]	Dept of Health & ES	SB 100	
[illegible]	Montana Nurses Assn.	SB 100	
[illegible]	Montana Nurses Assn.	SB 100	
Ken Rutledge	Montana Hospital Association	SB 100	
Bill Warfield	Montana Council of Alcoholism & Mental Health Boards	SB 100	
[illegible]	Mont. Nurses' Association	SB 100	
[illegible]	Nursing Home Assn	SB 100	
[illegible]	Chief of Bureau SRS	SB 100	
[illegible]	Lobbyist Mont. Health Assn	SB 100	

(Please leave prepared statement with Secretary)

MINUTES OF THE MEETING

PUBLIC HEALTH, WELFARE & SAFETY COMMITTEE

February 2, 1979

The tenth meeting of the Public Health, Welfare, and Safety Committee met in Room 410 of the State Capitol Building at 12:30 p.m.

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL 61: Senate Bill 61 is an act requiring all insurance companies including health service corporations who issue health insurance policies in Montana to include provisions in the contracts for the coverage of the treatment of alcoholism, chemical dependency, and drug addiction. Senate Bill 61 was heard in Committee on January 15, 1979.

Senator Norman, sponsor of Senate Bill 61, recalled that there was a great amount of facts and figures thrown around about what the bill as introduced would do to insurance premiums. There was some other difficulties with the bill as to resident treatment and certainly limitations on the amount of liability the insurance companies would incur for treatment of alcoholism. Senator Norman proposed that except for the title the entire bill be substituted with what is basically a California law. See Attachment "A." It has many of the factors in it which were suggested by the people who opposed the original bill.

Senator Rasmussen stated that he felt we should rehear the bill. Senator Norman stated that the amendment has the same features in it basically. Senator Rasmussen moved that we conduct another public hearing on Senate Bill 61. The motion carried. Jo Driscoll from the Insurance Department stated that some people who were here today had traveled great distances and would like to testify. Senator Lensink moved that we reconsider our prior action and hear the bill today. A roll call vote was taken, and the motion passed.

Senator Norman said that the first section is merely the purpose, which is self-evident. The second section relates the definitions of the act. The third section of the bill relates to the availability of coverage. On page 3 there is a number under item 2 of $750. Senator Norman stated that he believes that amount is rather low and should be something like $1500. The effective date is open. It could be immediately or the regular July 1 effective date.

Mr. Zanto replied that these are non-profit centers where the state contracts for services. The state couldn't bill the individuals, but the programs could. The state gives the money on a grant basis. Senator Lensink asked Mr. Harrison how this differs from what they have now. Mr. Harrison replied that this is mandated. The common group is a small group, and they say right off the bat that they don't want alcohol coverage. Blue Shield will still have to rate it out and put it in the insurance and then it could be opted out if this bill passes. Senator Norman asked if their are other large insurance companies that oppose this bill. Mr. Harrison said he doesn't know if Blue Cross opposes the bill or if they are aware of it.

Chairman Olson closed the hearing on Senate Bill 61 at 1:25 p.m. He stated that the bill will be back in Committee on Monday, February 5, and further hearing and work session will be held on February 9, 1979.

CONSIDERATION OF SENATE BILL 100: Senate Bill 100 is an act to revise the laws relating to health care facilities. Senate Bill 100 was heard in Committee on January 19, 1979.

Senator Norman referred the Committee to a sheet of proposed amendments (see Attachment "B"). He stated that on page 8, line 21 (d) he cannot technically understand why that would be stricken.

William Leary, Montana Hospital Association, said that they are trying to simplify the process in the event the hospital wants to decrease their beds or in the event that the facility wants to decrease the service. See Attachment "C," page 4. The Montana Health Systems opposes this amendment. See Attachment "D," item 1.

Senator Norman moved that amendment 1 on Attachment "B" be adopted. Senator Himsl wanted to know what happens if the request comes in for 10 beds and then another 10 beds, etc. Mr. Fenner, Department of Health, replied that the law reads that this decrease is over a two-year period. Senator Rasmussen asked Mr. Gildroy if they feel that the 10 percent is substantial. Mr. Gildroy feels that the community should have the opportunity to say whether they want a full review even for 10 percent. Roll call vote was taken. Vote was three to three, so the motion failed.

Amendment number 2 on Attachment "B" would be necessary only if Amendment number 1 had passed.

Amendment number 3 corrects a typographical error. Senator Norman moved that amendment number 3 on Attachment "B" be adopted. The motion was seconded and passed unanimously.

Senator Norman stated that amendment number 4 on Attachment "B" was a concern of Dr. McMahon regarding confidentiality of patient records. Senator Norman made a motion that amendment number 4 be adopted. The motion was seconded and passed unanimously.

Senator Norman said that amendment number 5 on Attachment "B" deals with the appeal process in building or expanding a health facility. The present bill provides that the Department of Health can give approval on condition that certain things are done. The Montana Hospital Association wants a clear cut yes or no. Ken Rutledge, Montana Hospital Association, spoke to the Committee about their reasons for wanting "with or without conditions" removed. See item 1 in Attachment "C" and Attachment "E". The association feels that being able to approve plans with conditions would unnecessarily increase construction costs and, therefore, increase medical costs to the consumer. Mr. Fenner stated that the ability to attach conditions would strengthen the process. He feels that it would be a longer delay if the department were not allowed to put conditions on. The department does not feel that it would inflate the cost on projects with good planning. He stated that the Montana Health Systems Agency is opposed to the striking of "with or without conditions." Senator Rasmussen moved that we adopt amendment number 5 on Attachment "B." Roll call vote was taken. Motion failed.

Amendments number 6 and 7 in Attachment "B" deal with the appeals process. Senator Norman says the amendments deal with the problem of the department not acting on an application within 90 days. If they do not act within this time, is the application approved or denied. Mr. Leary stated that there is some confusion within the law. Congress should take action on this matter before July 1. Because of the inconsistency at the federal level, the department can refuse to act and give the application automatic disapproval. Mr. Leary feels this should be stricken out and allow the Department of Health to write the rules which will become effective by Congress. They can rewrite either approval or disapproval into the act when it is deemed on a federal level.

If this is in the law as it now says and if Congress writes language that says it will be approved, the Legislature will have to amend it in two years. Mr. Fenner stated that the department has checked with HEW, and it has to be in the law or in the rules. The department has no objection in removing it from the law if the Committee understands that we have to put it in the rules. Senator Lensink moved that amendments 6 and 7 of Attachment "B" be approved. A roll call vote was taken, and the amendments were adopted.

Amendment number 8 of Attachment "B" calls for the insertion of the words "quality equivalent" following "costly." Senator Norman stated that this amendment is proposed to provide that a level of quality can be maintained instead of just looking at the cost factor. Senator Ryan moved the amendment be adopted. Motion was seconded and carried unanimously.

Amendment number 9 on Attachment "B" refers to hearings and appeals. Senator Norman stated that the bill requires that a person show the department there is good cause before the department will go back and reconsider a decision. This prevents frivolous costs. On the other hand, if you have to show good cause, you have a hearing before a hearing. Senator Norman moved that amendment number 9 be adopted. Chad Smith stated that since the hearing he has worked with the Board of Health to come up with an amendment which takes care of this problem. He presented copies of the proposed amendment to the Committee (see Attachment "F"). This language will allow for the individuals that are directly concerned with this to have a hearing, but any other affected individual would have to show good cause to have a hearing. Senator Norman withdrew his previous motion and moved that we adopt the amendment presented by Chad Smith. Roll call vote was taken, and the motion passed.

Chad Smith then referred the Committee to amendment number 16 of Attachment "B" and requested that the Committee take out "interested person" and put in "party." Senator Rasmussen moved that we adopt amendment number 16 as proposed by Chad Smith. A roll call vote was taken, and the motion carried.

ANNOUNCEMENTS: Chairman Olson stated that the hearing on Senate Bill 100 will reconvene on February 9, 1979.

ADJOURNMENT: There being no further business discussed, the meeting was adjourned at 2:25 p.m.

S. A. Olson

S. A. OLSON, CHAIRMAN

ROLL CALL

PUBLIC HEALTH COMMITTEE

46th LEGISLATIVE SESSION - - 1979 Date 2-2-79

NAME	PRESENT	ABSENT	EXCUSED
Olson, S. A., Chairman	✓		
Rasmussen, A. T., V. Chr.	✓		
Himsl, Matt V.	✓		
Lensink, Everett R.	✓		
Norman, Bill	✓		
Palmer, Bob	✓		
Ryan, Patrick L.	✓		

Each day attach to minutes.

ATTACHMENT "B"

SUGGESTED AMENDMENTS TO SB 100 "CERTIFICATE OF NEED" LEGISLATION SPONSORED BY SENATOR NORMAN AT THE REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES.

1. Page 8, line 21. (Montana Hosital Assn. Bill Leary)
   Following: line 21
   Insert: "(d) requests for decreases in the number of beds by 10% of the facility's licensed capacity or 10 beds, whichever is less, or decreases in services will be subjected to a non-subtantive review by the state department of health and environmental sciences."

2. Page 9, line 7. (Bill Leary, MT Hospital Ass'n)
   Following: line 7
   Insert: "(20) Non-substantive review" means...(definition to be supplied by DH&ES)"
   Renumber: subsequent subsections.

3. Page 9, line 24. (Dennis Taylor, Staff)
   Following: "An"
   Strike: "out patient"
   Insert: "outpatient"

4. Page 13, line 15. (Sen. Norman; John McMahon, MT Medical Assn)
   Following: "patients."
   Insert: "A department employee who discloses information which would identify a patient shall be dismissed from employment and subject to the provision of 45-7-401, unless the disclosure was authorized in writing by the patient, his guardian, or his agent."

5. Page 20, line 13. (Bill Leary, MT Hospital Assn)
   Strike: ", with or without conditions,"

6. Page 20, line 14. (Bill Leary, MT Hospital Assn; Glen Drake, MT Nursing Home Assn)
   Following: "Application"
   Strike: "If the department fails to act within the"

7. Page 20, line 15. (Bill Leary, Montana Hospital Assn; Glen Drake, Montana Nursing Home Assn)
   Following: Line 15
   Strike: Lines 15 and 16 in their entirety

8. Page 22, line 9. (John McMahon, Montana Medical Assn)
   Following: "costly"
   Insert: "quality equivalent"

9. Page 25, line 11. (Chad Smith, Montana Hospital Assn)
   Following: "may"
   Strike: ",for"

10. Page 25, line 12. (Chad Smith, Montana Hospital Assn)
Following: line 11
Strike: "good cause,"

11. Page 25, line 15. (Chad Smith, Montana Hospital Assn)
Following: "writing"
Strike: remainder of line 15

12. Page 25, line 16. (Chad Smith, Montana Hospital Assn)
Following: line 15
Strike: "the department"

13. Page 25, line 18. (Chad Smith, Montana Hospital Assn)
Strike: ","

14. Page 25, line 19. (Chad Smith, Montana Hospital Assn)
Strike: "if warranted,"

15. Page 25, line 23. (Chad Smith, Montana Hospital Assn)
Following: "hearing."
Insert: "The hearing shall be conducted in accordance with 2-4-601 through 2-4-623."

16. Page 26, line 12. (Chad Smith, Montana Hospital Assn)
Following: "decision."
Insert: "The board, upon request of any interested person, shall hear oral argument and receive written briefs."

17. Page 26, line 25. (Chad Smith, Montana Hospital Assn)
Strike: line 25 in its entirety

18. Page 27, line 1. (Chad Smith, Montana Hospital Assn)
Strike: Line 1 in its entirety

19. Page 27, line 19. (Dennis Taylor, Staff)
Following: line 18
Strike: "59-5-301"
Insert: "50-5-301"

ATTACHMENT "C"

Montana Hospital Association

(406) 442-1911 · P. O. BOX 5119 · HELENA, MONTANA 59601

EXPLANATION OF MHA AMENDMENTS TO S.B. 100

Amendment to remove the provision for approval with conditions.

1. Under the current process for C.O.N. decisions the Montana Health Systems Agency makes recommendations for approval or disapproval of C.O.N. proposals. Such recommendations are based on an MHSA review at the local level by an MHSA sub-area council. This recommendation then goes to the MHSA executive committee which after considering the record of the sub-area review makes a final recommendation to the State Department of Health and Environmental Sciences (SDH&ES). The SDH&ES makes the final decision for approval or disapproval of a project after taking into consideration the MHSA recommendation. The MHSA has made clear its intent to make recommendations with conditions if the SDH&ES is allowed to do so. This is documented in the MHSA's new Program Review Manual as approved by its governing board. We feel that the provision for such conditions would greatly increase the potential for conflicts between MHSA recommendations and SDH&ES decisions.

   a. With new provision for reconsideration hearings for "good cause," such conflicts can result in 55 days additional time being tacked onto the current 90 day review period. This will have a definite inflationary effect on capital expenditures. It should be noted that the definition of affected parties is quite broad and a single member of an HSA sub-area or statewide committee could request a reconsideration hearing if the state failed to set the same conditions as the HSA committee.

The fewer possibilities there are for inconsistencies between HSA sub-area, HSA statewide and SDH&ES decisions, the fewer reconsideration hearings there are liable to be.

b. This increased probability of conflict between the HSA and SDH&ES could also result in an increased number of appeals to the Board of Health by the HSA of State Agency decisions.

2. The power to make conditions and approve only parts of a project may very well have a negative impact on the financial feasibility or desirability of individual projects. Major capital expenditures by health care facilities are normally proposed only after in-depth studies, which often consider two or more possible courses of action. Such studies are then reviewed by the facility's board of trustees, often over a long period of time, before a final course of action is chosen. In short, major capital expenditure decisions are only made after the feasibility, impact, etc. of the project has been thoroughly studied by the facility. Without the benefit of such detailed and expert analysis, the HSA and SDH&ES are not in a position to fully understand the consequences of a partial approval. We support the concept of requiring C.O.N. approval for major capital expenditures but are worried about the advisability of allowing planning agencies to perform surgery on hospital proposals.

3. Under the current Montana C.O.N. law, which only addresses complete approval or disapproval of a proposed project, health care facilities are encouraged to develop reasonable proposals for capital expenditures, excluding those items which are unnecessary, duplicative or unjustifiably expensive. Because of the total approval or disapproval process that is now in effect, proposals which could be considered unnecessary are rejected by the facility because of the risk of having the entire project disapproved. There is, in other words, a built-in disincentive factor which prevents health care

facilities from proposing unneeded capital expenditures and services, which are not in accordance with the adopted State Health Plan. It is our contention that the "approval with conditions" provision could very likely result in inflated requests from health care facilities. As in any other situation involving bargaining, there is a tendency to request more than is actually needed or expected.

4. There is no doubt that the "approval with conditions" provision would give the SDH&ES more control over the expenditures and new services of hospitals. The question is, however, "Is this desirable?" Increased government control and intervention into the health care field does not necessarily result in lower health care costs. Massachusetts and New York are recognized as having among the most government regulated health care industries in the nation, yet these states also have the highest hospital costs in the nation. In addition, their rates of increase in hospital expenditures have consistently exceeded those of Montana. Montana hospitals have had an exemplary record of containing costs over the past ten years and an overly ambitious C.O.N. program may end up costing much more than it saves.

Provision for Automatic Disapproval if the Department Fails to Act Within 90 Days

I refer you to page 20, Section 13 (4) lines 14 through 18. The wording "If the department fails to act within the designated period and an extension has not been granted, the failure to act constitutes disapproval of the application" is strongly objected to by our members. This sentence is currently in conflict with Section 1122 of the Social Security Act which ironically requires that failure to act by the state agency within 90 days will mandate approval of the application. There is a conflict in this area between the language of Section 1122 of the Social Security Act and the HEW rules and guidelines for Certificate of Need programs. This conflict must

be resolved on the national level before it is mandated in a state law. Hopefully, within the next session of Congress this conflict will be resolved.

The State Department argues that without this provision, Montana might not have a complying Certificate of Need law and could risk loss of federal health funds. It is the contention of the Montana Hospital Association that despite the HEW regulations this disapproval approach is totally unfair as it provides a "pocket veto" provision for an application. The provision is also illogical since after a proposal has been disapproved by the department's failure to act, the applicant can request a fair hearing for "reconsideration." This, in effect, gives the department an additional 55 days within which to act on the application. Because there is currently a conflict with two federal laws or regulations, we request that the sentence "If the department fails to act within the designated period and an extension has not been granted, the failure to act constitutes disapproval of the application" be amended out of Senate Bill 100 so as to provide flexibility in our law, by remaining silent to address this concern in proposed Montana rules to implement the act beginning next July. By July we should have sufficient knowledge of the intention of Congress in this area and should be able to encompass a reasonable rule at that time.

Coverage of Decreases in Bed Capacity or Services Offered

I refer you to page 8, (18)(c) beginning line 16 through line 21 as reference for our next suggested amendment. In proposing this amendment we are seeking a more simplified approach for health care facilities to utilize when they wish to decrease their bed capacity or decrease a service. We recognize the department should have the authority to authorize decreasing of services and/or beds just as they have the authority to recommend increased

bed capacities and addition of health services. We point out, however, that federal regulations do not require coverage in a C.O.N. law of reductions in bed capacity or services although there is no major objection to allowing the department to review such requests. It is our contention that it makes little sense to require a health care facility to submit to the full Certificate of Need process for a reduction in beds or services as long as there are safeguards which allow the department prior review of such a request. Such reductions in services or bed capacities are normally needed to accomplish cost savings and a full Certificate of Need review with its associated costs would act to reduce any cost savings. We suggest, therefore, that this provision be amended to allow for approval from the department through a non-substantive desk review by the department. We recommend that Section 1 (18) on page 8 be amended by adding a paragraph between lines 21 and 22 to state

"(d) Requests for decreases in the number of beds by 10% of the facility's licensed capacity or 10 beds, whichever is less, or decreases in services will be subjected to a non-substantive review by the State Department of Health and Environmental Sciences."

Acceptance of this amendment would necessitate amending the bill further in the definitions on page 2 so as to define non-substantive review. We would accept a definition of "non-substantive review" as proposed by the department.

ATTACHMENT "D"

Montana Health Systems Agency, Inc.
324 Fuller Avenue
Helena, Montana 59601
(406) 443-5965

Ralph Gildroy
Executive Director

February 2, 1979

TESTIMONY CONCERNING PROPOSED AMENDMENTS TO
SENATE BILL 100, CERTIFICATE OF NEED LAW

The following are the positions of Montana Health Systems Agency relative to the proposed amendments:

1. Page 8, line 21. (Montana Hospital Assoc., Bill Leary)
   Following: line 21
   Insert: "(d) requests for decreases in the number of beds by 10 percent of the facility's licensed capacity or 10 beds, whichever is less, or decreases in services will be subjected to a non-substantive review by the state department of health and environmental sciences."

Montana Health Systems Agency is opposed to this amendment. Non-substantive review would mean automatic approval with no local citizen involvement. This automatic approval is demonstrated in Section II, page 5 (copy attached), of the Program Review Manual, a Manual produced conjointly by the Montana Health Systems Agency and Department of Health and Environmental Sciences to insure citizen participation. A non-substantive review for decreases in number of beds or services would provide the citizens of the affected service area no opportunity for inputs to decision-making which impacts the availability and accessibility of their health care services and facilities. A decrease may well not be in the best interests of the patient population. For example, acute psychiatric services could be eliminated, a CAT scanner removed with no scrutiny by those affected citizens. It is extremely important that both the Health Systems Agency and the Department of Health and Environmental Sciences monitor long-term care, acute care bed needs, and services in Montana. We must be aware and have the opportunity to recommend approval or disapproval of changes concerning decreases in licensure and provisions of service. Without this awareness and opportunity, recommendations concerning appropriateness of services will be inhibited. Page 10 of the Program Review Manual states, "#2, substantial change in service, B, the termination of a clinically related service or department which had been previously provided. #3, change in licensed bed capacity, means either an increase or decrease in the licensed capacity under applicable Montana law." The proposed amendment is not in conformance with the Manual. Also, the addition or deletion of services offered and addition or deletion of beds in a health care facility without review is not in conformance with Section 1122 of the Social Security Act. The Montana Health Systems Agency endorses the conformance of Montana law with the 1122 regulations.

Continued Page 2

It is not reasonable to not allow for local decision-making on these proposals. Some of those types of services that may be reviewed for appropriateness are:

Tertiary Services

Clinical Cardiovascular Labs and Cardiac Surgery Facilities
Radiation Therapy
CAT Scanners
ESRD Facilities
Neonatal Intensive Care Units
Poison Control Services
Burn Care
Blood Banks

Secondary Services

General Hospital Acute Services
Critical Care (ICU/CCU) Beds
Psychiatric Beds
Clinical Labs
Diagnostic Imaging
Long-Term Care Facilities
Home Health Services
Alcohol and Drug Services
Mental Health Services

2. Page 9, line 7. (Montana Hospital Assoc., Bill Leary)
Following: line 7
Insert: "(20) Non-substantive review" means...(definition to be supplied by DH&ES).
Renumber: subsequent subsections.

The Montana Health Systems Agency feels that non-substantive review should be defined in rules, using Montana Administrative Procedures Act, and not be defined in the Montana Certificate of Need Law. The Program Review Manual developed conjointly by the Department of Health and Environmental Sciences and the Montana Health Systems Agency and approved by the MHSA Governing Board, contains a definition of non-substantive review.

3. Page 9, line 24. (Dennis Taylor, Staff)
Following: "An"
Strike: "out patient"
Insert: "outpatient"

Acceptable to Montana Health Systems Agency.

Continued Page 3

4. Page 13, line 15. (Sen. Norman; John McMahon, Montana Medical Assoc.)
Following: "patients."
Insert: "A department employee who discloses information which would identify a patient shall be dismissed from employment and subject to the provision of 45-7-401, unless the disclosure was authorized in writing by the patient, his guardian, or his agent."

Acceptable to Montana Health Systems Agency.

5. Page 20, line 13. (Montana Hospital Assoc., Bill Leary)
Strike: ", with or without conditions,"

Montana Health Systems Agency is opposed to the striking of "with or without conditions." It is unreasonable to recommend disapproval of an application when some conditions applied to the application may result in approval of a then acceptable, amended application. The above referenced Program Review Manual makes provision for approval, disapproval, or approval with conditions.

6. Page 20, line 14. (Bill Leary, Montana Hospital Assoc.; Glen Drake, Montana Nursing Home Assoc.)
Following: "Application"
Strike: "If the department fails to act within the"

and

7. Page 20, line 15. (Bill Leary, Montana Hospital Assoc.; Glen Drake, Montana Nursing Home Assoc.)
Following: Line 15
Strike: Lines 15 and 16 in their entirety.

Montana Health Systems Agency is opposed to the above proposed amendments #6 and #7. Number 6 and #7 are not in conformance with current minimum requirements issued in the Federal regulations.

8. Page 22, line 9. (John McMahon, Montana Medical Assoc.)
Following: "costly"
Insert: "quality equivalent"

Acceptable to Montana Health Systems Agency.

9. Page 25, line 11. (Chad Smith, Montana Hospital Assoc.)
Following: "may"
Strike: ",for"

and

10. Page 25, line 12. (Chad Smith, Montana Hospital Assoc.)
Following: line 11.
Strike: "good cause,"

and

11. Page 25, line 15. (Chad Smith, Montana Hospital Assoc.)
Following: "writing"
Strike: remainder of line 15

Continued

and

12. Page 25, line 16. (Chad Smith, Montana Hospital Assoc.)
Following: line 15
Strike: "the department"

and

13. Page 25, line 18. (Chad Smith, Montana Hospital Assoc.)
Strike: ","

and

14. Page 25, line 19. (Chad Smith, Montana Hospital Assoc.)
Strike: "if warranted,"

Montana Health Systems Agency, in reference to proposed amendments #9, 10, 11, 12; 13, and 14, feels that these proposals are contrary to the regulations for New Institutional Health Services, Section 123.407, (8), "Provision that any person may, for good cause shown; request in writing." This is also included in the above referenced Program Review Manual.

15. Page 25, line 23. (Chad Smith, Montana Hospital Assoc.)
Following: "hearing."
Insert: "The hearing shall be conducted in accordance with 2-4-601 through 2-4-623."

Acceptable.

16. Page 26, line 12. (Chad Smith, Montana Hospital Assoc.)
Following: "decision."
Insert: "The board, upon request of any interested person, shall hear oral argument and receive written briefs."

The Montana Health Systems Agency feels that this proposed amendment is contrary to the regulations for New Institutional Health Services, Section 123.407, (10), "provision that any decision of the State Agency under this subpart (and the record upon which it was made) shall, upon request of the person proposing the new institutional health service, be reviewed, under an appeals mechanism.. ..." This provision is also addressed in the above referenced Program Review Manual.

17. Page 26, line 25. (Chad Smith, Montana Hospital Assoc.)
Strike: line 25 in its entirety.

and

18. Page 27, line 1. (Chad Smith, Montana Hospital Assoc.)
Strike: line 1 in its entirety.

Montana Health Systems Agency is opposed to the deletion indicated in #17 and 18. If this sentence is deleted there is no opportunity for Department of Health and Environmental Sciences to initiate rules for hearing and appellate procedures.

Continued Page 5

19. Page 27, line 19. (Dennis Taylor, Staff)
Following: line 18
Strike: "59-5-301"
Insert: "50-5-301"

Acceptable.

Ralph Gildroy

RALPH GILDROY
Executive Director
Montana Health Systems Agency

RG/gr

ATTACHMENT "E"

Montana Hospital Association

(406) 442-1911 · P. O. BOX 5119 · HELENA, MONTANA 59601

To Members of the Senate Public Health and Welfare Committee:

One of the most often repeated statements heard about hospital care nowadays is that its cost has gotten out of control. In fact, the increase in the cost of health care and, in particular, the cost of hospital care was the primary motivation behind the enactment of the Health Planning and Resource Development Act of 1974 (P.L. 93-641), which, among other things, mandated that all states must enact Certificate of Need legislation.

The cause of this high rate of increase in hospital costs is not fully understood, though it has been attributed by various groups to excessive duplication of hospital equipment and services, excess hospital capacity, increased hospital demand caused by the implementation of Medicare and Medicaid in 1966 and 1967 and to large increases in government regulation of hospitals. General economy-wide inflation and advances in the quality of hospital care are also mentioned as factors contributing to the rate of increases in hospital costs.

It has been assumed by many groups in this state that the extremely high rates of inflation in hospital care that have been observed in other states have also been experienced in Montana. This is, however, not the case. By whatever indicator of hospital expenses one chooses to examine Montana, hospitals have had an exemplary record of containing costs. The Montana Hospital Association has prepared the attached hospital expense data to illustrate the achievements of Montana hospitals in restraining the increase in health care expenses.

BEST COPY
AVAILABLE

Montana Hospital Associ

(406) 442-1911 · P. O. BOX 5119 · HELENA, MONTAI

U.S. HOSPITAL EXPENDITURES 1967 - 1976

The attached tables and graphs, which have been developed by the M Hospital Association, are based on a report published in February by ICF Incorporated. In conducting its analysis of hospital expen ICF Incorporated employed data from The American Hospital Associat annual surveys as reported in Hospital Statistics (1967-77 edition

The first year of the study, 1967, is significant because it refle the beginning of The Medicare/Medicaid Era. (Medicare was impleme in 1966, Medicaid in 1967) With Medicare and Medicaid came increas demand for hospital services, a new reimbursement system based on rather than charges and new concern by the Federal Government abou cost of health care.

The last year of the study, 1976, represents the most recent year f which hospital expenditure data was available at the time ICF Incor ated undertook its study. It should be noted that in 1977 Montana' hospital expenditures continued to rise at a slower rate than the national average.

What can be seen from the attached tables and graphs is that Montan rate of increase in hospital expenses for the period 1967 - 1976 is among the lowest in the nation. This period, it should be pointed was prior to the implementation of Montana's current CON law.

Included in the tables and graphs are the following:

Graph #1 - Shows the total percentage increase in hospital exp tures over the nine year period. Montana's 186% inc was the smallest in the nation and the only increase which did not exceed 200%. Included on the graph fo reasons of comparison are representations of the ave U.S. increase, the median increase for The American Hospital Association's Region 8 (excluding Montana) the increases of Florida and Alaska, the second high and highest increases nationwide respectively.

Graph #2 - This graph depicts the level of hospital expenditure per case for the nine year period. Montana moved fr a ranking of 43rd in the nation in terms of this ind in 1967 (out of 51 since Washington, D.C. is include to 47th in 1976. In terms of the percentage increase hospital expenditures per case between 1967 and 1976 Montana ranked 50th out of 51. Also included on the graph are New York which had the highest level of ho expenditures per case in 1976, Arkansas which had the lowest level, and the average level for the U.S.

Graph #3 - This graph illustrates the level of hospital expenditures per capita over the nine year period. Montana ranked 26th in the nation in this category in 1967, moving to 40th position in 1976. In terms of the percentage increase in this indicator over the nine year period, Montana ranked 50th in the nation. Also depicted on the graph are Washington, D.C. and Massachusetts which ranked first and second highest respectively in 1976 in terms of per-capita hospital expenditures, Wyoming which had the lowest level in 1976 and the U.S. average for this indicator.

Table #1 - This table shows the average yearly and cumulative percentage increases in hospital expenditures for the fifty states and Washington, D.C. with the highest level of increase being ranked #1. Also included are the U.S. averages for both indicators.

Table #2 - This table depicts the 1967 and 1976 levels of hospital expenditures per case as well as the dollar increase from 1967 to 1976. Each part of the table has ranked the states according to the dollar level from highest to lowest.

Table #3 - This table ranks each state according to its average yearly increase in hospital expenditures per case and in terms of its cumulative increase over the nine year period.

Table #4 - This table ranks states according to the dollar level of hospital expenditures per capita in 1967 and 1976 as well as in terms of the dollar increase in the indicator over the nine year period.

Table #5 - This table ranks states according to the average yearly and cumulative percentage increases in hospital expenditures over the nine year period.

ATTACHMENT "F"

"50-5-306. Right to hearing and appeal....
(1) THE APPLICANT OR A HEALTH SYSTEMS AGENCY DESIGNATED PURSUANT TO TITLE XV OF THE PUBLIC HEALTH SERVICE ACT MAY REQUEST AND SHALL BE GRANTED A PUBLIC HEARING BEFORE THE DEPARTMENT TO RECONSIDER ITS DECISION , IF THE REQUEST IS RECEIVED BY THE DEPARTMENT WITHIN 30 CALENDAR DAYS AFTER THE DECISION IS ANNOUNCED. Any OTHER affected person may, for good cause, request the department to reconsider its decision at SUCH a ~~public~~ hearing. The department shall grant the request if the affected person submits the request in writing showing good cause as defined in rules adopted by the department and if the request is received by the department within 30 calendar days after the decision is announced. The public hearing to reconsider shall be held, if warranted OR REQUIRED, within 30 calendar days after its request. The department shall make its final decision and written findings of fact and conclusions of law in support thereof within 45 days after the conclusion of the reconsideration hearing. THE HEARING SHALL BE CONDUCTED IN ACCORDANCE WITH 2-4-601 THROUGH 2-4-623.

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SENATE COMMITTEE PUBLIC HEALTH

Date 2-2-79 Bill No. SB 110 Time 1:40 p.

NAME	YES	NO
Senator Matt V. Himsl	✓	
Senator Everett R. Lensink		✓
Senator Bill Norman	✓	
Senator Bob Palmer	Absent	
Senator Patrick Ryan		✓
Senator A. T. Rasmussen, Vice-Chairman		✓
Senator S. A. Olson, Chairman	✓	

Judy J. Olson
Secretary

S. A. Olson
Chairman

Motion: Amendment #1 - Attachment "B"

(include enough information on motion--put with yellow copy of committee report.)

BEST COPY AVAILABLE

SENATE COMMITTEE PUBLIC HEALTH

Date 2-2-79 Bill No. SB 100 Time 1:45 p.m.

NAME	YES	NO
Senator Matt V. Himsl	✓	
Senator Everett R. Lensink	✓	
Senator Bill Norman	✓	
Senator Bob Palmer	✓	
Senator Patrick Ryan	✓	
Senator A. T. Rasmussen, Vice-Chairman	✓	
Senator S. A. Olson, Chairman	✓	

Secretary

Chairman

Motion: Amend & Fd on Attachment "B"

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE PUBLIC HEALTH

BEST COPY
AVAILABLE

Date 2-2-99 Bill No. SB 116 Time 2:00 p

NAME	YES	NO
Senator Matt V. Himsl		✓
Senator Everett R. Lensink	✓	
Senator Bill Norman		✓
Senator Bob Palmer		✓
Senator Patrick Ryan		✓
Senator A. T. Rasmussen, Vice-Chairman	✓	
Senator S. A. Olson, Chairman		✓

Secretary

Chairman

Motion: Amend. #5 - Attachment "B" - Page 20, Line 13

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE PUBLIC HEALTH

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Date 2-2-79 Bill No. SB100 Time 2:15 p.m.

NAME	YES	NO
Senator Matt V. Himsl	✓	
Senator Everett R. Lensink	✓	
Senator Bill Norman	✓	
Senator Bob Palmer	✓	
Senator Patrick Ryan	✓	
Senator A. T. Rasmussen, Vice-Chairman	✓	
Senator S. A. Olson, Chairman	✓	

Secretary

Chairman

Motion: Amend to 6-7 - Attachment "B".

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE PUBLIC HEALTH

BEST COPY AVAILABLE

Date 2-2-79 Bill No. SJR 2 Time 2:00 p.m.

NAME	YES	NO
Senator Matt V. Himsl	✓	
Senator Everett R. Lensink	✓	
Senator Bill Norman	✓	
Senator Bob Palmer	✓	
Senator Patrick Ryan		✓
Senator A. T. Rasmussen, Vice-Chairman	✓	
Senator S. A. Olson, Chairman	✓	

Secretary

Chairman

Motion: Adopt amendments as Prior to hearing and appear White C Attached and "F"

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SENATE COMMITTEE PUBLIC HEALTH

Date 2-2-79 Bill No. SB 104 Time 2:25 p.m.

NAME	YES	NO
Senator Matt V. Himsl	✓	
Senator Everett R. Lensink	✓	
Senator Bill Norman	✓	
Senator Bob Palmer	✓	
Senator Patrick Ryan		✓
Senator A. T. Rasmussen, Vice-Chairman	✓	
Senator S. A. Olson, Chairman	✓	

Secretary

Chairman

Motion: Move to adopt amendments on page 22, line 12 following "Section." Insert "The board upon request of any party shall review and approve or disapprove with findings."

(include enough information on motion--put with yellow copy of committee report.)

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SENATE _____ COMMITTEE

BILL SB 100 VISITORS' REGISTER DATE Feb 2

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPO
Ralph Hildreth	Montana Health Systems Agency	100		
Barbara Cubbat	Dept Health	100		

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

MINUTES OF THE MEETING

PUBLIC HEALTH, WELFARE & SAFETY COMMITTEE

February 9, 1979

The thirteenth meeting of the Public Health, Welfare and Safety Committee met on February 9, 1979, in Room 410 of the State Capitol Building at 1:00 p.m.

ROLL CALL: All members were present except Senator Himsl and Senator Palmer, who arrived later in the meeting.

CONSIDERATION OF SENATE BILL 100: Senator Norman, sponsor of Senate Bill 100, said that it is his understanding that any amendments made on pages 1 through 24 of Senate Bill 100 are still adopted by this Committee. The Department of Health and Environmental Sciences has proposed an amendment (see Attachment "A") to Senate Bill 100 on page 25, lines 11 through 23. Senator Norman stated that this refers to hearings with good cause, and it is his understanding that this proposed amendment is agreeable to all parties concerned. Senator Norman made a motion that the Committee incorporate as an amendment item 1 in Attachment "A." Senator Lensink stated that this allows showing good cause in writing and asked Mr. Fenner, Department of Health, for clarification. Mr. Fenner said this amendment was worked out with the department's legal department, the Legislative Council, and the Montana Medical Association. It says that the health systems agency and the applicant have a right to a hearing, but anybody else wanting a hearing must show good cause. Motion passed unanimously.

Senator Norman referred the Committee to the amendment proposed in item 2 of Attachment "A." Senator Norman made a motion that we adopt amendment 2 of Attachment "A." Senator Lensink stated that this broadens the hearing quite a bit and asked Mr. Fenner about this. Mr. Fenner said it does broaden it so that it allows new testimony to be brought in. Motion passed unanimously.

Senator Norman referred the Committee to number 3 on Attachment "A." Dennis Taylor said that this amendment was taken care of with the other amendments. He then referred the Committee to amendment number 19 on Attachment "B" and asked for the correction because of a typographical error. Senator Norman moved that amendment 19. on Attachment "B" be adopted. Motion carried unanimously.

ACTION ON SENATE BILL 100: Senator Norman moved that Senate Bill 100 as amended DO PASS. The motion passed unanimously.

Chairman Rasmussen stated that a statement of intent was needed on Senate Bill 100. He appointed a subcommittee of Senator Norman and Senator Olson to work with Dennis Taylor in drafting up a letter of intent. Senator Norman asked each of the groups present who had interest in Senate Bill 100 to appoint one person from their organization to work with the subcommittee and to give the name of that person to the committee secretary that afternoon.

CONSIDERATION OF SENATE BILL 61: Senator Norman, sponsor of Senate Bill 61, said that the introduced bill met with a lot of opposition. By working on amendments to the bill much of the opposition has subsided. He referred the Committee to Substitute Bill 61 (see Attachment "C") and said that he had some amendments to this substitute bill that were suggested by Mr. Tom Harrison, MPS Blue Shield. In Section 2 of Attachment "C" Mr. Harrison suggests that the Committee delete "while confined" and substitute "which requires confinement." Senator Norman stated that he doesn't understand the need for the change. Ms. Driscoll, Insurance Department, said that what might be behind this proposed amendment is the requirement that the doctor require that the patient be in the hospital. After much discussion, it was decided that the amendment was not necessary.

Senator Norman then referred the Committee to Section 2, subsection 2, of Attachment "C" and stated that Mr. Harrison would like the word "reasonable" inserted in front of "charges" in three places. Senator Lensink stated that he feels this is necessary rather than leaving it open-ended. Senator Norman moved that the proposed amendment be adopted. The motion passed unanimously.

Senator Norman referred the Committee to page 2 of Attachment "C" and said that before Section 3 Mr. Harrison would like to add a subsection (4) which more clearly defines a physician. Ms. Driscoll said that there is a law on the books now which defines physician, and this amendment would be in conflict. The Insurance Department could not allow the regular carriers to restrict the definition of physician. The definition of physician as defined in the Code was read to the Committee. Senator Lensink said he feels the substitute bill as proposed is okay since it is referring to the center setting. It was decided not to adopt the suggested amendment.

ROLL CALL

PUBLIC HEALTH COMMITTEE

45th LEGISLATIVE SESSION - - 1979 Date 3-2-79

NAME	PRESENT	ABSENT	EXCUSED
Rasmussen, A. T., Chairman	✓		
Olson, S. A., V. Chairman	✓		
Himsl, Matt V.		✓	
Lensink, Everett R.	✓		
Norman, Bill	✓		
Palmer, Bob		✓	
Ryan, Patrick L.	✓		

ATTACHMENT "A"

Department of Health and Environmental Sciences
STATE OF MONTANA HELENA, MONTANA 59601

February 9, 1979

A. C. Knight, M.D., F.C.C.P.
Director

TO: Senator S. A. Olson, Chairman
Public Health, Welfare and Safety Committee
And Members of the Committee

FROM: George M. Fenner, Administrator
Division of Hospital and Medical Facilities
Department of Health and Environmental Sciences

RE: Continuation of response to Suggested Amendments to Senate Bill 100 "Certificate of Need" Legislation sponsored by Senator Norman at the request of the Department of Health and Environmental Sciences.

The following amendments are offered as a substitute for amendments 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 as presented to the Senate Health, Welfare and Safety Committee hearing on Senate Bill 100 on January 19, 1979, by Chad Smith, Montana Hospital Association.

1. Page 25, line 11 through line 23 (this includes proposed amendments 9 through 15)

"The applicant or a Health Systems Agency designated pursuant to Title XV of the Public Health Service Act may request and shall be granted a public hearing before the Department to reconsider its decision, if the request is received by the Department within 30 calendar days after the decision is announced. Any other affected person may, for good cause, request the Department to reconsider its decision at such a hearing. The Department shall grant the request if the affected person submits the request in writing showing good cause as defined in rules adopted by the Department and if the request is received by the Department within 30 calendar days after the decision is announced. The public hearing to reconsider shall be held, if warranted or required, within 30 calendar days after its request. The Department shall make its final decision and written findings of fact and conclusions of law in support thereof within 45 days after the conclusion of the reconsideration hearing. The hearing shall be conducted in accordance with 2-4-601 through 2-4-623."

2. Page 26, line 12 following decision. Add (addresses proposed amendment 16)

"The Board, upon the request of any party to an appeal before the Board, shall hear oral arguments and receive written briefs."

3. The Hospital Association agreed to strike proposed amendments 17 and 18.

These amendments were drafted in consultation with Mr. Smith; Bill Leary, Executive Secretary, Montana Hospital Association; the Legal Division of the Department of Health and Environmental Sciences; and Wallace A. King, Chief, Bureau of Health Planning and Resource Development, Department of Health and Environmental Sciences.

ATTACHMENT "B"

SUGGESTED AMENDMENTS TO SB 100 "CERTIFICATE OF NEED" LEGISLATION SPONSORED BY SENATOR NORMAN AT THE REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES.

1. Page 8, line 21. (Montana Hosital Assn. Bill Leary)
Following: line 21
Insert: "(d) requests for decreases in the number of beds by 10% of the facility's licensed capacity or 10 beds, whichever is less, or decreases in services will be subjected to a non-subtantive review by the state department of health and environmental sciences."

2. Page 9, line 7. (Bill Leary, MT Hospital Ass'n)
Following: line 7
Insert: "(20) Non-substantive review" means...(definition to be supplied by DH&ES)"
Renumber: subsequent subsections.

3. Page 9, line 24. (Dennis Taylor, Staff)
Following: "An"
Strike: "out patient"
Insert: "outpatient"

4. Page 13, line 15. (Sen. Norman; John McMahon, MT Medical Assn)
Following: "patients."
Insert: "A department employee who discloses information which would identify a patient shall be dismissed from employment and subject to the provision of 45-7-401, unless the disclosure was authorized in writing by the patient, his guardian, or his agent."

5. Page 20, line 13. (Bill Leary, MT Hospital Assn)
Strike: ", with or without conditions,"

6. Page 20, line 14. (Bill Leary, MT Hospital Assn; Glen Drake, MT Nursing Home Assn)
Following: "Application"
Strike: "If the department fails to act within the"

7. Page 20, line 15. (Bill Leary, Montana Hospital Assn; Glen Drake, Montana Nursing Home Assn)
Following: Line 15
Strike: Lines 15 and 16 in their entirety

8. Page 22, line 9. (John McMahon, Montana Medical Assn)
Following: "costly"
Insert: "quality equivalent"

9. Page 25, line 11. (Chad Smith, Montana Hospital Assn)
Following: "may"
Strike: ",for"

10. Page 25, line 12. (Chad Smith, Montana Hospital Assn)
Following: line 11
Strike: "good cause,"

11. Page 25, line 15. (Chad Smith, Montana Hospital Assn)
Following: "writing"
Strike: remainder of line 15

12. Page 25, line 16. (Chad Smith, Montana Hospital Assn)
Following: line 15
Strike: "the department"

13. Page 25, line 18. (Chad Smith, Montana Hospital Assn)
Strike: ","

14. Page 25, line 19. (Chad Smith, Montana Hospital Assn)
Strike: "if warranted,"

15. Page 25, line 23. (Chad Smith, Montana Hospital Assn)
Following: "hearing."
Insert: "The hearing shall be conducted in accordance with 2-4-601 through 2-4-623."

16. Page 26, line 12. (Chad Smith, Montana Hospital Assn)
Following: "decision."
Insert: "The board, upon request of any interested person, shall hear oral argument and receive written briefs."

17. Page 26, line 25. (Chad Smith, Montana Hospital Assn)
Strike: line 25 in its entirety

18. Page 27, line 1. (Chad Smith, Montana Hospital Assn)
Strike: Line 1 in its entirety

19. Page 27, line 19. (Dennis Taylor, Staff)
Following: line 18
Strike: "59-5-301"
Insert: "50-5-301"

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SENATE Rules COMMITTEE

BILL SB 61/100 VISITORS' REGISTER DATE 2-9-11

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPP
MA King	DNRE	SB 100	✓	
Lance Pitts	Dept of Transportation	SB 61	—	
Ralph Williams	MT Tech Master Agency	SB 100		
Lee Rutledge	Montana Logging Assoc	SB 61	✓	
Dwight Grinde	Bitterroot Resource	SB 61		

MINUTES OF THE MEETING

PUBLIC HEALTH, WELFARE & SAFETY COMMITTEE

February 14, 1979

The fifteenth meeting of the Senate Public Health, Welfare and Safety Committee met on February 14, 1979, in Room 410 of the State Capitol Building at 12:30 p.m.

CONSIDERATION OF SENATE JOINT RESOLUTION 16: Senate Joint Resolution 16 requests that the Department of Social and Rehabilitation Services fund day-care services through Title XX of the Social Security Act.

Witnesses supporting SJR 16:

Janice Watson, Montana Day Care Association
Jim Romeneski, St. Thomas Child Center
Jim Zion, Montana Day-Care Association
Pat Godbout, Associated Students of Univ. of Montana
Diane Williams, League of Women Voters

Witnesses opposing SJR 16:

John Fitzpatrick, Office of Budget & Program Planning

Senator Palmer, sponsor of SJR 16, said that it is a joint resolution of the Senate and the House to request that SRS fund day-care services through Title XX. He said there will be a lot of testimony about the proposed change from Title XX to Title IVA. This will cause a great deal of difficulty if funding is switched. He introduced Linda Brander, Montana Day-Care Association, to introduce her proponents who wish to testify.

Janice Watson, Montana Day-Care Association, said that presently the children are enrolled in day-care centers and day-care homes that are licensed by the state of Montana to care for the children. As a day-care operator, she has worked with a lot of children. They usually start with her at the age of 2 or 3 and stay until they are 6 or 7. It becomes a home away from home and is sometimes better than home because there is no conflict. Title XX uses the voucher system, and the day-care person is paid directly from the state. Therefore, there is no problem with the child attending. What will happen under Title IVA is that the parents would have the responsibility of paying the day-care center. These parents are making very little and bills pile up. They find they can no longer afford day care, so they place the children with a friend or an older child. What happens to the child when they are moved from one situation to another is that they begin not to trust adults, not to trust society, and not to make friends with other children.

Mr. McKennis said this is a law now. Senator Norman asked if an 18 year old could sit and drink Tab without being banned. Mr. Harrington said that is permitted under state law. Senator Norman wanted to know why they didn't stop an 18 year old from holding a liquor license. Mr. McKennis said he doesn't want to get involved in the system of liquor quotas. The license is a valuable piece of property. They do not want to pass a bill saying they cannot hold a license because this would be taking personal property without compensation for those who already own a license. They are going to grandfather those people into the new law. Senator Ryan asked why they are deleting distribution of ID cards. Mr. McKennis said there is a provision already existing in state law that says you can get an ID card from the Highway Department in much the same way you get a driver's license. Therefore, having two departments give ID cards is a duplication of service.

The hearing on Senate Bill 398 was closed at 2:00 p.m.

ACTION ON SENATE BILL 398: Senator Norman moved DO PASS on Senate Bill 398. Roll call vote was taken, and the motion passed unanimously.

CONSIDERATION OF STATEMENT OF INTENT FOR SENATE BILL 100: Senator Norman explained that we need the statement because we repeatedly gave the Department of Health rule-making authority in Senate Bill 100. There were eight instances of this in the bill. Some of them were trivial, and some were more detailed. Chairman Rasmussen asked Senator Norman to skim through the bill with the Committee. Senator Norman stated that the first two pages of the statement of intent is a general statement of what the Committee is trying to do. Section 2 starting on page 11 requires the most definition. Mr. Taylor explained the different parts of the statement to the Committee. Senator Norman stated that much of the rule-making authority granted in this bill was already given to the Health Department through the years, but all this rule-making authority had to be extended to cover home health agencies.

Senator Olson moved that the Statement of Intent be adopted. The motion passed unanimously.

ROLL CALL

PUBLIC HEALTH COMMITTEE

45th LEGISLATIVE SESSION - - 1979 Date 1/[illegible]/79

NAME	PRESENT	ABSENT	EXCUSED
Rasmussen, A. T., Chairman	✓		
Olson, S. A., V. Chairman	✓		
Himsl, Matt V.	✓		
Lensink, Everett R.	✓		
Norman, Bill	✓		
Palmer, Bob	✓		
Ryan, Patrick L.	✓		

Each day attach to minutes

HUMAN SERVICES COMMITTEE

46th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB-398	Act to conform certain liquor laws to constitutional amendment raising the drinking age to 19 years old.	2/21/79	Boylan	3/2/79	Be concurred in	3/5/79
SB-100	Revising the laws to health care facilities.	2/21/79	Norman	3/2/79	Be concurred in	3/8/79
SB-61	An act to require all insurance companies to provide in contracts coverage for treatment of alcoholism, chemical dependency and drug addiction.	2/21/79	Norman	3/2/79	Be Concurred in	3/5/79
SB-376	Act to require recipients of purlic assistance to report income not previously declared and providing a civil penalty for violations.	2/17/79	McCallum	3/2/79	Be concurred in	3/5/79
SB-377	Act to require the identification of the manufacturer of all drug products.	2/21/79	Palmer	3/7/79	Be concurred in	3/8/79

STATEMENT OF INTENT RE: SB 100

A statement of intent is required for this bill because it delegates rulemaking authority to the Department of Health and Environmental Sciences. This bill is intended to expand the authority of the Department of Health and Environmental Sciences to license health care facilities in order to cover additional health care facilities, and to revise the requirements of specific health care facilities to obtain a certificate of need. Generally the Department of Health and Environmental Sciences is intended to have the authority to amend and update existing licensure rules and to adopt new rules for licensure to conform with the mandates of P.L. 92-603 and the Social Security Act, titles V, XVIII, and XIX.

In the same spirit, the Department may write and adopt rules, in accordance with the Montana Administrative Procedure Act, to insure the implementation of a state certificate of need program which meets the minimum standards of P.L. 93-641, the National Health Planning and Resources Development Act, and which is acceptable to the Secretary of the Department of Health, Education and Welfare. This program is aimed at insuring that only new institutional health services, expenditures in excess of $150,000 made to prepare for a new institutional health service, or arrangements and commitments made to finance a new institutional health service which are found by the Department of Health and Environmental Sciences to be needed may be granted a certificate of need and that only those services which are granted a certificate of need may be offered to the public.

Section 2 if the primary, broad-based source of rulemaking authority for the entire chapter. Insofar as licensing and certification of health care facilities are concerned. Title 50, chapter 5, part 2, this section does not add any new discretionary authority beyond that already authorized for the Department, with the exception that this section is intended to allow the setting of certification standards for additional types of health care facilities, such as health maintenance organizations and adult day care centers not currently covered by law. This section is not intended to expand the existing rulemaking authority under part 4 except for rules specific to the additional health care facilities that will be covered.

Section 2 is intended to clearly authorize rulemaking authority to implement part 3. As a minimum, it is intended that the Department may adopt rules covering the following:

1. procedures and assurances required by 42 CFR 123.401 through 42 CFR 123.411 and any subsequent rules

SB 100

replacing or augmenting them;

2. procedures to be followed during the review process, including any interrelationships with review being conducted by a health systems agency; and

3. the effect on an application for certificate of need if the Department fails to decide whether to approve or disapprove the application within the time period set for review.

Section 5 is intended to allow the Department to require health care facilities to keep records and file reports with the Department containing information relevant to licensing, certification, statewide health planning, and resources development.

Section 9 is not intended to be construed to add new rulemaking authority beyond what is currently authorized for the Department. The rules referred to in the section refer to federal rules implementing the federal statute cited in this section.

Section 10 is intended to retain existing authority to set a licensing standards except that those standards may be set for the new types of health care facilities added by this bill.

Section 13 is intended to authorize the Department to prescribe by rule the form of letters of intent and applications for certificate of need and to specify what

information should be provided in each. This is further specific authority for rules governing a portion of the review process. The procedure for the entire review process is intended to be detailed under the authority delegated by Section 2.

Section 14 is explicit as to what review criteria, required findings, and standards must be included in Department rules adopted to implement the act; however, the Department may, within the scope of this section, adopt rules to more clearly define the criteria enumerated in this section.

Section 15 allows the Department to establish by rule what will constitute "good cause" to extend the period for which a certificate of need is valid.

Section 16 is intended to permit the Department to define what will constitute "good cause" to grant a reconsideration hearing, in order to prevent hearings based on frivolous grounds and to contain administrative costs. This section is also intended to authorize additional specific procedures for administrative hearings, at both the Department and Board levels, than are provided in the Montana Administrative Procedure Act but which are consistent with the provisions of MAPA.

Section 20 is intended to apply specifically to Title 50, chapter 5, part 4, and does not broaden existing

rulemaking authority except where it applies to the new types of health care facilities added by this bill.

First adopted by the SENATE COMMITTEE ON PUBLIC HEALTH, WELFARE, AND SAFETY on February 14, 1979.

SENATE BILL NO. 100

INTRODUCED BY NORMAN, MENAHAN

BY REQUEST OF

THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAWS RELATING TO HEALTH CARE FACILITIES, DEFINING HEALTH CARE FACILITIES TO INCLUDE AMONG OTHER ENTITIES HOME HEALTH AGENCIES AND ADULT DAY-CARE CENTERS AND ELIMINATING EXISTING LAWS DEALING WITH HOME HEALTH AGENCIES; PROVIDING FOR A CERTIFICATE OF NEED AND FOR REVIEW OF APPLICATIONS FOR CERTIFICATES OF NEED AND APPEAL PROCEDURES, PROVIDING GUIDELINES FOR DENIAL, SUSPENSION, OR REVOCATION OF HEALTH CARE FACILITY LICENSES; PROVIDING FOR CIVIL PENALTIES; AMENDING SECTIONS 50-5-101, 50-5-103 THROUGH 50-5-106, 50-5-108, 50-5-109, 50-5-201, 50-5-204, 50-5-207, 50-5-301, 50-5-302, 50-5-304 THROUGH 50-5-307, 50-5-402, 50-5-404, 50-5-405, 50-5-408, AND 50-5-411, MCA; AND REPEALING SECTIONS 50-5-102, 50-5-205, 50-5-206, 50-5-209, 50-5-303, 50-5-401, 50-5-412, AND 50-7-101 THROUGH 50-7-309, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through 3 ~~4~~ of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Adult day-care center" means a facility, free-standing or connected to another health care facility, which provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

(2) "Affected persons" means the applicant, members of the public who are to be served by the proposal, health care facilities located in the geographic area affected by the application, agencies which establish rates for health care facilities, and agencies which plan or assist in planning for such facilities, including any agency qualifying as a health systems agency pursuant to Title XV of the Public Health Service Act.

(3) "Ambulatory surgical facility" means a facility, not part of a hospital, which provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

~~(1)~~(4) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(5) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

~~(2)--"Construction"--means--the--erection,---expansion,-remodeling,-or-alteration-of-a-new-or-existing-facility,-the-~~

THIRD READING

~~capital--expenditure-for-which-amounts-to-$50,000-or-more-in any-12-month-period-or-any-substantial-change--in--services, any--increase-or-decrease-in-the-number-of-beds-in-excess-of 10%-of-the-licensed-capacity-of-the-facility-or-in-excess-of 10-beds,--whichever--is--the--lesser,--or--any--purchase--of therapeutic--or--diagnostic-equipment-(excluding-replacement of-existing-equipment)-in-any--12-month--period--at--a--cost exceeding-2%-of-the-facility's-total-operating-costs-for-the most--recently--completed--fiscal--year--up--to-a-maximum-of $100,000-or-exceeding-$10,000,--whichever--is--larger.---All exemptions---from---this--definition--must--nevertheless--be consistent-with-the-state-medical--facilities--plan--of--the department.~~

(6) "Construction" means the physical erection of a health care facility and any stage thereof, including ground breaking.

~~(3)~~(7) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(8) "Federal acts" means federal statutes for the construction of health care facilities.

~~(4)~~(9) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

~~(5)~~(10) "Health care facility" means ~~a---hospital,~~

~~hospital-related--facility,--or-long-term-care-facility.~~ any institution, building, or agency or portion thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospitals, infirmaries, kidney treatment centers, long-term care facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, and adult day-care centers.

(11) "Health maintenance organization" means a public or private organization organized as defined in 42 U.S.C. 300e, as amended.

(12) "Home health agency" means a public agency or private organization or subdivision thereof which is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

~~(6)~~(13) "Hospital" means a ~~health---care facility licensed-by-the-department-to-provide~~ providing, by or under

the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons. Services provided may or may not include obstetrical care, emergency care, or any other service as allowed by state licensing authority. A ~~health care facility, in order to be licensed as a hospital, must~~ have has an organized medical staff, ~~provide~~ which is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed professional registered nurses, ~~and be in compliance with the rules for licensed hospitals adopted by the department.~~ This term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

~~(7) "Hospital-related facility" means a facility licensed by the department to provide diagnosis, treatment, medical or nursing care, or medically related rehabilitation services. Such facilities include but are not limited to outpatient facilities, public health centers, rehabilitation facilities, long-term care facilities, infirmaries, mental health and mental retardation institutions, alcoholism and drug dependency centers, and half-way houses. A health care facility, in order to be licensed as a "hospital-related facility", shall be in compliance with the regulations for the specific category of facility adopted by the department.~~

~~(8)~~(14) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

~~(9)~~(a) an "~~Infirmary A~~" "infirmary--A" provides outpatient and inpatient care;

~~(10)~~(b) an "~~Infirmary B~~" "infirmary--B" provides outpatient care only.

(15) "Kidney treatment center" means a facility which specializes in treatment of kidney diseases, including freestanding hemodialysis units.

~~(11)~~(16) (a) "Long-term care facility" means a ~~place~~ facility or part thereof which provides skilled nursing care or intermediate nursing care to a total of two or more persons or personal care to more than three persons who, ~~by reason of illness or disability, are unable to properly care for themselves and~~ are not related to the owner or administrator by blood or marriage ~~and includes the facilities defined as follows:~~ with these degrees of care defined as follows:

(i) "Skilled nursing ~~facilities" are establishments furnishing continuous skilled nursing care and related services 24 hours a day~~ care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a

24-hour basis.

(ii) "Intermediate nursing care" facilities--A"--are establishments--furnishing--limited-skilled-nursing-care-and personal-care means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(iii) "Intermediate-----care-----facilities--B"-----are establishments-providing-only-personal-care-and-services--to residents. "Personal care" means the provision of services and care which do not require nursing skills to residents needing some assistance in performing the activities of daily living.

(iv) "Combination--facilities"---are----establishments providing--two--or--more--of-the-following-services:-skilled nursing-care-and-intermediate-care--A-and-B.

(b) Hotels, motels, boardinghouses boarding homes, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care are not considered--to--be long-term care facilities.

(17) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients or the rehabilitation of such persons, or any combination of these

services.

(18) "New institutional health services" means:

(a) the construction, development, or other establishment of a health care facility which did not previously exist;

(b) any expenditure by or on behalf of a health care facility within a 12-month period in excess of $150,000, which, under generally accepted accounting principles consistently applied, is a capital expenditure. Whenever a health care facility or a person on behalf of a health care facility makes an acquisition under lease or comparable arrangement or through donation, which would have required review if the acquisition had been by purchase, such acquisition shall be considered a capital expenditure subject to review.

(c) a change in bed capacity of a health care facility which increases or decreases the total number of beds, redistributes beds among various service categories, or relocates such beds from one physical facility or site to another over a 2-year period by more than 10 beds or 10% of the total licensed bed capacity, whichever is less;

(d) health services which are offered in or through a health care facility and which were not offered on a regular basis in or through such health care facility within the 12-month period prior to the time such services would be

offered or the deletion by a health care facility of a service previously offered;

(e) the expansion of a geographic service area of a home health agency.

(19) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

~~(12)~~(20) "Observation bed" ~~is~~ means a bed used occupied for not more than 6 hours by a patient recovering from surgery or other treatment.

(21) "Offer" means the holding out by a health care facility that it can provide specific health services.

~~(13)~~(22) "Outpatient facility--A" means ~~a physically separate component of a licensed hospital or a medical clinic or other establishment owned or operated by a licensed physician which has an observation bed or beds and provides to patients not requiring hospitalization the services of persons licensed to practice medicine or dentistry in the state of Montana. No patient may be allowed to remain in an outpatient facility for more than 6 hours~~ a facility, located in or apart from a hospital, providing, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An ~~out-patient~~ OUTPATIENT facility may have observation beds.

~~(14) "Outpatient facility--B" means a facility operated physically apart from a hospital, other than a medical clinic or other establishment owned or operated by a licensed physician, which provides to ambulatory patients not requiring hospitalization the services of persons licensed to practice medicine or dentistry in Montana, but which does not have an observation bed or beds as defined in subsection (12).~~

(23) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

~~(15)~~(24) "Person" means an any individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

~~(16)~~(25) "Public health center" means a publicly owned facility ~~utilized by a local health unit for the provision~~ providing of public health services, including related ~~public facilities such as~~ laboratories, clinics, and administrative offices ~~operated in connection with a public health center~~.

~~(17)~~(26) "Rehabilitation facility" means a facility ~~providing community service~~ which is operated for the primary purpose of assisting in the rehabilitation of disabled persons ~~through an integrated program under competent professional supervision, including medical~~

~~services--and--evaluation--and--psychological--social--and vocational----services----and----evaluation~~ by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

~~(10)~~(27) "Resident" means a person who is in a long-term care facility ~~as a patient or~~ for intermediate or personal care.

(28) "State plan" means the state medical facility plan provided for in part 4."

Section 2. Section 50-5-103, MCA, is amended to read:

"50-5-103. Rules and standards. (1) The department shall promulgate, and adopt, ~~and publish~~ rules and minimum standards ~~for----licensure----of----all---hospitals---and hospital-related-facilities~~ for implementation of parts 1 through 4.

(2) ~~Rules--relating--to--building,--equipment,--and--fire and-life-safety-shall-be-covered-by-the-state-building-code.~~ Any facility covered by this chapter shall comply with the state and federal requirements relating to construction, equipment, and fire and life safety.

(3) The department shall extend a reasonable time for compliance with rules for parts 1 through 4 after adoption."

Section 3. Section 50-5-104, MCA, is amended to read:

"50-5-104. Certain exemptions for spiritual healing institution. Parts 1 through 3 and rules and standards adopted by the department may not authorize the supervision, regulation, or control of care or treatment of persons in any home or institution conducted for those who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denomination. However, a license is required and ~~all--other~~ the minimum standards referred to in 50-5-103(2) apply."

Section 4. Section 50-5-105, MCA, is amended to read:

"50-5-105. ~~Discrimination among patients of physicians~~ prohibited. (1) All phases of the operation of a health care facility shall be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, age, marital status, physical or mental handicap, or political ideas.

(2) No person who operates a facility may discriminate among the patients of licensed physicians. The free and confidential professional relationship between a licensed physician and patient shall continue and remain unaffected. ~~Physicians--shall--continue--to--have--direction--over--their patients.~~"

Section 5. Section 50-5-106, MCA, is amended to read:

"50-5-106. ~~Information--received--confidential~~ Records and reports required of health care facilities -- confidentiality. Health care facilities shall keep records and make reports as required by the department. Before February 1 of each year, every licensed health care facility shall submit an annual report for the preceding calendar year to the department. The report shall be on forms and contain information specified by the department. Information received by the department or board through reports, ~~inspection~~ inspections, or provisions of parts 1 ~~through--3~~ and 2 may not be disclosed in a way which would identify ~~individuals--or--facilities,--except--in--a--proceeding--involving the--question--of--licensure--or--as--required--by--the--federal government--for--certification--or--preparation--of--a--state--plan~~ patients. A DEPARTMENT EMPLOYEE WHO DISCLOSES INFORMATION WHICH WOULD IDENTIFY A PATIENT SHALL BE DISMISSED FROM EMPLOYMENT AND SUBJECT TO THE PROVISION OF 45-7-401, UNLESS THE DISCLOSURE WAS AUTHORIZED IN WRITING BY THE PATIENT, HIS GUARDIAN, OR HIS AGENT. Information and statistical reports from health care facilities which are considered necessary by the department for health planning and resource development activities will be made available to the public and the health planning agencies within the state. Applications by health care facilities for certificates of need and any information relevant to review of these

applications, pursuant to part 3, shall be accessible to the public."

Section 6. Section 50-5-108, MCA, is amended to read:

"50-5-108. Injunction. The department, on advice of the attorney general, ~~may maintain~~ bring an action for injunction or other process against any person to restrain or prevent the establishment, conduct, management, or operation of a facility which ~~is endangering health and welfare~~ in violation of any provision of parts 1 or 4 of this chapter."

Section 7. Section 50-5-109, MCA, is amended to read:

"50-5-109. Penalty. A person who violates provisions of parts 1 ~~through--3~~ or 4 is guilty of a misdemeanor. On conviction he shall be fined not more than $100 for the first offense and not more than $300 for each subsequent offense. ~~Each day of a continuing violation after conviction is a separate offense.~~"

Section 8. Section 50-5-201, MCA, is amended to read:

"50-5-201. License requirements. ~~(1)~~ A licensee who contemplates construction of or alteration or addition to a health care facility shall submit plans and specifications to the department for preliminary inspection and approval prior to commencing construction.

~~(2)~~(2) No person may operate a health care facility unless the facility is licensed by the department. Licenses

shall be for 1 year unless issued for a shorter period. A license is valid only for the person and premises for which it was issued. A license may not be sold, assigned, or transferred.

~~(2)~~(3) Upon discontinuance of the operation or of transfer of ownership of a facility, the license must be returned to the department.

~~(3)~~(4) Licenses shall be displayed in a conspicuous place near ~~where patients or residents are admitted~~ the admitting office of the facility."

Section 9. Section 50-5-204, MCA, is amended to read:

"50-5-204. Issuance and renewal of licenses. (1) On receipt of a new or renewal application, the department or its authorized agent shall inspect the facility. If minimum standards are met and the proposed staff is qualified, the department shall issue a license for 1 year. If minimum standards are not met, the department may issue a provisional license for less than 1 year if operation will not result in undue hazard to patients or residents or if the demand for accommodations offered is not met in the community. The minimum standards which home health agencies must meet in order to be licensed shall be as outlined in 42 U.S.C. 1395 x(o), as amended, and in rules implementing it which add minimum standards.

(2) Licensed premises shall be open to inspection, and

access to all records shall be granted at all reasonable times."

Section 10. Section 50-5-207, MCA, is amended to read:

"50-5-207. Denial, suspension, or revocation of ~~hospital or hospital-related~~ health care facility license -- provisional license. (1) The department may deny, suspend, or revoke a ~~hospital or hospital-related~~ health care facility license if ~~it finds there has been substantial failure to comply with the provisions of parts 1 through 3~~ any of the following circumstances exist:

(a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.

(b) The staff is insufficient in number or unqualified by lack of training or experience.

(c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.

(d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.

(e) There is cruelty or indifference affecting the welfare of the patients or residents.

(f) There is misappropriation of the property or funds

of a patient or resident.

(g) There is conversion of the property of a patient or resident without his consent.

(b) Any provision of parts 1 through 3 is violated.

(2) The department may reduce a license to provisional status if as a result of an inspection it is determined minimum standards are not being met.

(3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need requirements of part 3."

NEW SECTION. Section 11. Civil penalty -- injunction. (1) A person who violates the terms of [Title 50, chapter 5, part 2,] is subject to a civil penalty not to exceed $1,000. Each day of violation constitutes a separate violation. The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may petition the district court to impose, assess, and recover the civil penalty. Money collected as a civil penalty shall be deposited in the state general fund.

(2) The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may bring an action to enjoin a violation of any provision of [Title 50, chapter 5, part 2], in addition to or exclusive of the remedy in

subsection (1).

Section 12. Section 50-5-301, MCA, is amended to read:

"50-5-301. ~~Preliminary---submission---of---plans---for approval.~~ When application is required. ~~(1)--The--department may--adopt--rules--to--require--an--applicant-or-licensee-who contemplates-construction-of-alteration-or--addition--to--a health--care--facility-to-submit-plans-and-specifications-to the-department-for-preliminary-inspection-and-approval-prior to-commencing-construction.~~

~~(2)--Approval-may--be--given--only--if--the--plans--and specifications---conform--to--the--state--or--the--municipal building-code-which--applies--to--the--facility.~~ Unless an application has been submitted to and a certificate of need granted by the department, no person may initiate any of the following:

(1) a new institutional health service as defined in 50-5-101;

(2) any expenditure by or on behalf of a health care facility in excess of $150,000 made in preparation for the offering or development of a new institutional health service and any arrangement or commitment made for financing the offering or development of the new institutional health service. Expenditures made in the preparation for the offering of a new institutional health service shall include expenditures for architectural designs, preliminary plans,

working drawings, specifications, studies, and surveys."

Section 13. Section 50-5-302, MCA, is amended to read:

"50-5-302. Form---and---content---of--application--for approval Application and review process. (1)-An--application for--approval--must-be-submitted-to-the-department-in-a-form together-with-information-as-the-department--may--prescribe.

(2)--The-application-shall-include:

(a)--a--narrative--description-of-the-proposed-project;

(b)--the-number-and-type-of-beds-and/or-services-to--be provided;

(c)--the-estimated-cost;

(d)--the-source-of-financing;

(e)--the--expected--time-for-completion-of-the-proposed project;-and

(f)--a-simple-line-drawing-showing-major--dimensions-of the-proposed-project. (1) Any person intending to initiate an activity for which a certificate of need is required shall submit a letter of intent to the department. After receipt, the department shall send the applicant a form requiring the submission of information considered necessary by the department to determine if the proposed activity meets the standards in 50-5-304. The form and content of the notification of intent and applications for certificates of need shall be prescribed by rule by the department.

(2) Within 15 calendar days after receipt of the

application, the department shall determine whether it contains sufficient information to determine if the proposed activity meets the standards in 50-5-304. If the application is found incomplete, the department shall request additional information.

(3) After the application has been designated complete, notification must be sent to the applicant and all other affected persons regarding the department's projected review of the application and the review period time schedule. The review period for the application may be no longer than 90 calendar days after the notice is sent unless a longer period is agreed to by the applicant. During the review period a public hearing may be held if requested by one or more affected persons.

(4) The department shall, after considering all comments received during the review period, issue a certificate of need, with or without conditions, or reject the application. If-the-department-fails-to-act-within-the designated-period-and-an-extension-has-not-been-granted,-the failure-to-act-constitutes-disapproval-of--the--application. The department shall notify the applicant and affected persons of its decision."

Section 14. Section 50-5-304, MCA, is amended to read:

"50-5-304. Requirements-for-approval Review criteria, required findings, and standards. (1)-No-application-may-be

approved unless the action proposed:

(a) is necessary to provide required health care in the area to be served;

(b) can be economically accomplished and maintained; and

(c) will contribute to the orderly development of adequate and effective health services.

(2) In making the determinations enumerated in subsection (1), the following shall be considered:

(a) the compatibility with needs shown in the appropriate state plan provided by those statutes relating to facilities, contained in part 4 of this chapter;

(b) the availability of facilities or services which may serve as alternates or substitutes;

(c) the need for special equipment and services in the area;

(d) the possible economies and improvement in services to be anticipated from the operation of combined central services, including but not limited to laboratory, research, radiology, pharmacy, laundry, and purchasing;

(e) the adequacy of financial resources and sources of future revenues; and

(f) the availability of sufficient manpower in the several professional disciplines. The department shall by rule promulgate and utilize, as appropriate, specific

criteria for reviewing certificate of need applications under this chapter, including but not limited to the following considerations and required findings:

(1) the relationship of the health services being reviewed to the applicable health systems plan and annual implementation plan developed pursuant to Title XV of the Public Health Service Act, as amended;

(2) the relationship of services reviewed to the long-range development plans, if any, of the person providing or proposing the services;

(3) the need that the population served or to be served by the services has for the services;

(4) the availability of less costly QUALITY EQUIVALENT or more effective alternative methods of providing such services;

(5) the immediate and long-term financial feasibility of the proposal as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the health service;

(6) the relationship and financial impact of the services proposed to be provided to the existing health care system of the area in which such services are proposed to be provided;

(7) the availability of resources, including health manpower, management personnel, and funds for capital and

operating needs for the provision of services proposed to be provided and the availability of alternative uses of such resources for the provision of other health services;

(8) the relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services;

(9) the special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. Such entities may include medical and other health profession schools, multidisciplinary clinics, and specialty centers.

(10) the special needs and circumstances of health maintenance organizations for which assistance may be provided under Title XIII of the Public Health Service Act. Such needs and circumstances include the needs of and costs to members and projected members of the health maintenance organization in obtaining health services and the potential for a reduction in the use of inpatient care in the community through an extension of preventive health services and the provision of more systematic and comprehensive health services.

(11) the special needs and circumstances of biomedical and behavioral research projects which are designed to meet

a national need and for which local conditions offer special advantages;

(12) in the case of a construction project, the costs and methods of the proposed construction, including the costs and methods of energy provision, and the probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project;

(13) the distance, convenience, cost of transportation, and accessibility of health services for persons who live outside urban areas in relation to the proposal; and

(14) any other criteria, required findings, or requirements for reviewing certificate of need applications cited in the federal regulations found in Title 42, CFR, Part 123, as amended."

Section 15. Section 50-5-305, MCA, is amended to read:

"50-5-305. Period of validity of approved application. ~~An approved application for construction is valid for 1 year from the date of issue but may be extended by the department for a period of 6 months.~~ A certificate of need shall terminate 1 year after the date of issuance unless:

(1) the applicant has commenced construction if the project provides for construction or has incurred an enforceable capital expenditure commitment for projects not involving construction; or

(2) the certificate of need validity period is extended by the department for one additional period of 6 months, upon showing good cause by the applicant for the extension."

Section 16. Section 50-5-306, MCA, is amended to read:

"50-5-306. Right to hearing and appeal. ~~(1)--If--the department--disapproves-an-application-for-construction-of-a facility,-it-shall-notify-the-applicant-of-its--actions--and afford--the--applicant--an--opportunity-to-request-a-hearing before-the-board.~~

~~(2)--When-this-hearing-is-desired,-the-applicant--shall notify--the--department--in-writing-within-15-days-after-the notice-of-disapproval-is-received.~~

~~(3)--If-the-decision--after--hearing--is--adverse,--the applicant--may--appeal--to-the-district-court-as-provided-in Title-2,-chapter-4,-part-7.~~ (1) THE APPLICANT OR A HEALTH SYSTEMS AGENCY DESIGNATED PURSUANT TO TITLE XV OF THE PUBLIC HEALTH SERVICE ACT MAY REQUEST AND SHALL BE GRANTED A PUBLIC HEARING BEFORE THE DEPARTMENT TO RECONSIDER ITS DECISION, IF THE REQUEST IS RECEIVED BY THE DEPARTMENT WITHIN 30 CALENDAR DAYS AFTER THE DECISION IS ANNOUNCED. Any OTHER affected person may, for good cause, request the department to reconsider its decision at ~~a public~~ SUCH A hearing. The department shall grant the request if the affected person submits the request in writing showing good cause as defined

in rules adopted by the department and if the request is received by the department within 30 calendar days after the decision is announced. The public hearing to reconsider shall be held, if warranted OR REQUIRED, within 30 calendar days after its request. The department shall make its final decision and written findings of fact and conclusions of law in support thereof within 45 days after the conclusion of the reconsideration hearing. THE HEARING SHALL BE CONDUCTED IN ACCORDANCE WITH 2-4-601 THROUGH 2-4-623.

(2) An aggrieved applicant or a health systems agency designated pursuant to Title XV of the Public Health Service Act may appeal the department's final decision to the board by filing a written notice of appeal stating the specific findings of fact and conclusions of law being appealed and the grounds. The notice of appeal must be received by the board within 30 calendar days after formal notice of the department's final decision was issued. The board shall give public notice of the appeal within 10 days, and the hearing shall be held within 30 days after receipt of the notice of appeal.

(3) The scope of the hearing before the board is limited to a review of the record upon which the department made its decision. THE BOARD, UPON REQUEST OF ANY PARTY TO AN APPEAL BEFORE THE BOARD, SHALL HEAR ORAL ARGUMENTS AND RECEIVE WRITTEN BRIEFS. Within 45 calendar days after the

conclusion of the public hearing, the board shall make and issue its decision, supported by written findings of fact and conclusions of law. The board may affirm the department's decision or remand it for further proceedings. The board may reverse or modify the department's decision if the appellant's rights have been prejudiced for any of the reasons found in 2-4-704.

~~(4)~~ The final decision of the board shall be considered the decision of the department for purposes of an appeal to district court. Any affected person may appeal this decision to the district court as provided in Title 2, chapter 4, part 7.

~~(5)~~ The department may by rule prescribe in greater detail the hearing and appellate procedures."

Section 17. Section 50-5-307, MCA, is amended to read:

"50-5-307. ~~Penalties--for--failure--to--obtain--prior approval~~ Civil penalty -- injunction. ~~Penalties for failure to obtain prior approval of the department are as follows:~~

~~(1) Any person who constructs any new health care facility as defined in 50-5-101 without prior approval by the department is guilty of a misdemeanor and shall be punished by a fine of not less than $1,000 or more than $10,000, the fine to be deposited in the state general fund, and this new facility is not eligible for licensure as a health care facility as defined in 50-5-101.~~

~~(2) Any person who expands, remodels, or alters an existing health care facility as defined in 50-5-101 without prior written approval by the department is guilty of a misdemeanor and shall be punished by a fine of not less than $1,000 or more than $10,000, the fine to be deposited in the state general fund.~~ (1) A person who violates the terms of ~~50-5-301~~ 50-5-301 is subject to a civil penalty of not less than $1,000 or more than $10,000. Each day of violation constitutes a separate offense. The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may petition the district court to impose, assess, and recover the civil penalty. Money collected as a civil penalty shall be deposited in the state general fund.

(2) The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may bring an action to enjoin a violation of 50-5-301, in addition to or exclusive of the remedy in subsection (1)."

NEW SECTION. Section 18. Special circumstances. In the event of destruction of any part of a health care facility as a result of fire, storm, civil disturbance, or any act of God, the department may issue a certificate of need for only the replacement of the previously existing facility or portion thereof.

Section 19. Section 50-5-402, MCA, is amended to read:

"50-5-402. Administration of state ~~medical facility~~ plan. The department is the principal state agency for establishing and administering a statewide plan for construction, modernization, alteration, equipment, maintenance, or operation of a ~~hospital, medical, or related~~ health care facility for provision of care, treatment, diagnosis, rehabilitation, training, or related service. ~~This plan is to be known as the state medical facility plan.~~"

Section 20. Section 50-5-404, MCA, is amended to read:

"50-5-404. Duties of department. The department shall:

~~(1) adopt necessary rules for the administration of this part;~~

~~(2)~~(1) prescribe minimum standards for the maintenance and operation of ~~hospital, medical, and related~~ health care facilities receiving federal aid for construction under the state plan;

~~(3)~~(2) inventory existing hospital, medical, and related health care facilities;

~~(4)~~(3) survey the need for construction or alteration of ~~hospitals~~ health care facilities;

~~(5)~~(4) develop and administer a state plan for the construction and alteration of public and other nonprofit ~~hospital, medical, and related~~ health care facilities;

~~(6)~~(5) if desirable, enter into agreements for the utilization of facilities and services of other departments, agencies, and institutions, public or private;

~~(7)~~(6) accept and deposit with the state treasurer and spend any grant, ~~gift, or contribution~~ made to meet costs of carrying out this part;

~~(8)~~(7) prepare and review a construction program in accordance with federal requirements that will provide adequate ~~hospital, medical, and related~~ health care facilities to people in the state providing, as far as possible, for distribution throughout the state to make all types of services reasonably ~~acceptable~~ available to all persons;

~~(9)~~(8) submit to federal agencies state plans, including those for the ~~hospital, medical, and related~~ health care facilities construction program and modifications of it providing for the establishment and operation of ~~hospital, medical, and related~~ health care facilities construction activities in accordance with federal requirements;

~~(10)~~(9) make application to the appropriate federal agency for funds to assist in carrying out the survey and planning activities;

~~(11)~~(10) after approval of a plan by the appropriate federal agency, publish a description in newspapers having

general circulation throughout the state and make the plan available upon request to all persons or organizations;

~~(12)~~(11) inspect construction or alteration projects approved by the appropriate federal agency and, if satisfactory, certify that work has been performed on the project or purchases made in accordance with approved plans and specifications and that payment of federal funds is due to the applicant;

~~(13)~~(12) require reports and make inspections and investigations as necessary or required by the federal agency;

~~(14)~~(13) contract with consultants for services which are performed on a part-time or fee-for-service basis not involving administrative duties."

Section 21. Section 50-5-405, MCA, is amended to read:

"50-5-405. Contracts with federal agencies. The department may enter into contracts and agreements with agencies of the federal government to secure the benefit of federal programs to provide adequate ~~medical--and--related~~ health care facilities and services."

Section 22. Section 50-5-408, MCA, is amended to read:

"50-5-408. Applications for construction projects. Applications for ~~hospital-, medical-, and related~~ health care facilities construction projects may be submitted by a state agency, a political subdivision, or by any public or

nonprofit agency authorized to construct and operate a ~~hospital-, medical-, or related~~ health care facility."

Section 23. Section 50-5-411, MCA, is amended to read:

"50-5-411. Consolidated applications. (1) Boards of county commissioners of two or more counties may submit a consolidated application for a single ~~hospital-, medical~~ health care facility, or health center serving each of the counties included in the application.

(2) Any statutes investing counties with powers to construct, maintain, and operate ~~hospitals or medical~~ health care facilities directly or by lease or contract may be utilized for this joint action.

(3) All statutes governing submission of questions of establishing a ~~hospital or medical~~ health care facility, ~~hospital or medical~~ health care facility construction, issuance of bonds, or method of operation, and requiring a majority vote of taxpayers on the questions shall apply.

(4) Concurrent and joint action of two or more counties and approval by a majority of the voters in each county is required to authorize the issuance of bonds, construction, and contracts under a consolidated plan."

Section 24. Saving clause. This act does not affect certificate of need applications received and declared complete or granted by the department before the effective date of this act.

Section 25. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 26. Codification. (1) It is intended that section 11 of this act be codified as an integral part of Title 50, chapter 5, part 2; and the provisions contained in Title 50, chapter 5, parts 1 through 4, apply to section 11 of this act.

(2) It is intended that section 18 of this act be codified as an integral part of Title 50, chapter 5, part 3; and the provisions contained in Title 50, chapter 5, parts 1 through 4, apply to section 18 of this act.

Section 27. Repealer. Sections 50-5-102, 50-5-205, 50-5-206, 50-5-209, 50-5-303, 50-5-401, 50-5-412, and 50-7-101 through 50-7-309, MCA, are repealed.

-End-

March 2, 1979

HUMAN SERVICES COMMITTEE PROCEEDINGS

A meeting of the Human Services Committee was called to order by Chairperson Polly Holmes in the Capitol Annex at 1:30 p.m. with all members present except Representative Jay Fabrega who was absent.

The following bills were scheduled to be heard: Senate Bills 61, 100, 186, 376 and 398.

SENATE BILL 100 - Representative William Menahan said he is cosponsor with Senator Bill Norman and that Senate Bill 100 presents proposed amendments to Title 50, Chapter 5, part 1, 2, 3 and 4 of Montana Codes Annotated. The proposed amendments will correct some problems which were identified in the recodification process of our present law and also some problems which have been identified by the Department in administering this law in the last four years. Representative Menahan read from written testimony which is Exhibit 1.

Other proponents to Senate Bill 100 were:

George M. Fenner, representing the Department of Health and Environmental Sciences, is responsible for administering the Certificate of Need and Health Facility Licensure and Certification programs. Mr. Fenner spoke in support of this bill and written testimony is Exhibit 2.

Joanne Dodd, Billings, President, Montana Nurses Association, offered their support and prepared testimony is Exhibit 3. They had participated in the Senate hearing and in the subcommittee preparing the statement of intent.

Ralph Gildroy, Executive Director of the Montana Health Systems Agency, Inc., Helena, spoke briefly and written testimony is Exhibit 4.

Janet P. Kovalchik, representing the Montana Association of Home Health AGencies, said they are in support of Senate Bill 100 and additional comments are on Exhibit 5.

Chad Smith spoke on behalf of the Montana Hospital Association. They are in support of this bill. There were some procedural matters that had to be corrected in the Senate committee and it has been corrected to their satisfaction and is acceptable.

See Visitors' Register for other people present at the hearing who indicated their support - Exhibit 6.

There were no opponents.

Senator Norman said he sponsored this bill with Representative Menahan and there are two things in this bill; there is 24 million dollars and that is funding for the health department. Should they not comply the federal funds would be in jeopardy.

This bill influences all health care facilities in the state. This is an extension of what is in the statutes. The home health agencies, what is called an HMO, are two new areas of need. Hospitals, nursing home facilities are already under the certificate of need. There is a lengthy statement of intent because there is considerable rule-making authority in the bill and the committee is at liberty to amend that.

Representatives Feda and Hemstad came in.

There were questions by the committee.

Representative Gould noted that Mr. Fenner had mentioned kidney disease centers and asked if there are any in the state. Mr. Fenner said they are located in hospitals in Billings, Great Falls, Missoula and Helena. There could be free-standing kidney centers in Montana and they would come under the certificate of need.

Representative Keyser asked Senator Norman if under the repealers had they built back in the denial of application. Senator Norman said he presumed so, the legal council they had in committee in the Senate was directed to do so. Maybe this committee would like to check to see if it was done.

There were no other questions and the hearing closed on Senate Bill 100.

SENATE BILL 186 - Senator Norman, sponsor, said this is a very small bill and doubted if there are any opponents. On page 2, line 15, is all there is to the bill. What is happening, in foster homes where there are children and aged adults, the foster parent must give medication on occasions. It was found there was doubt as to whether the foster parent could do this. So it became a legal matter. The nurses became interested and when it was pointed out the foster parent would be acting as legal parent there was no opposition.

Edward Mares, representing the Montana Nurses Association, spoke in support of Senate Bill 186. This is an amendment to the Nurse Practice Act. The Board of Nursing is currently working on major changes for the next legislature and they are going to ask that the exemptions to the Nurse Practice Act be by administrative rule.

Mary Blake, representing the SRS, spoke in support and written testimony is Exhibit 7.

There were no opponents to Senate Bill 186 and there were no questions by the committee.

The hearing closed on Senate Bill 186.

anyone who can package or unpackage cannot sell to an intoxicated person?" In answer Mr. Smith read the title of the bill and said that is not addressed in this bill.

The hearing closed on Senate Bill 398.

The committee went into executive session to take action on the following bills:

SENATE BILL 398 - Representative Dozier moved a do pass on Senate Bill 398; question. The motion carried unanimously, Representative Stobie had left a written vote of yes. Representative Fabrega was absent. Representative Dozier will carry Senate Bill 398 on the floor of the House.

SENATE BILL 376 - Representative Gesek moved a do pass on Senate Bill 376; question. The motion carried unanimously. Representative Stobie left a written vote of yes. Representative Fabrega was absent. Representative Bennett will carry Senate Bill 376.

SENATE BILL 186 - Representative Bennett moved a do pass on Senate Bill 186; question. The motion carried unanimously. Representative Fabrega was absent and Representative Stobie was not present. Representative Bennett will carry Senate Bill 186.

SENATE BILL 100 - A motion was made for a do pass. During discussion Representative Hemstad said she received a letter from the Columbus Hospital in Great Falls and since she was not present when Senate Bill 100 was heard she wanted to know what the bill would do to the bill if it was recommended that the provision to approve the certificate of need was deleted and there was another recommendation in the letter. Representative Rosenthal suggested she hand the letter to the researcher and have her look at it. If there are problems she could present those to Representative Menahan. Representative Gould asked Kerry if he was satisfied with the repealers or should it be researched before the committee vote on the bill. Representative Keyser moved that the researcher look at this and report back to the committee; question. Motion carried.

SENATE BILL 61 - Representative Feda moved for a do pass on Senate Bill 61; question. The motion carried unanimously by the members present. Representative Bennett will carry Senate Bill 61.

Chairperson Polly Holmes informed the committee there only two other bills to be heard by the committee and the committee will meet at 12:30 p.m. next Wednesday, March 7, 1979.

March 7, 1979

HUMAN SERVICES COMMITTEE PROCEEDINGS:

A Human Services Committee meeting was held March 7, 1979 in room #108 of the Capitol. The meeting was called to order by Chairman Holmes at 12:30 and all members were present.

SENATE BILL #377 -- SPONSOR: Senator Bob Palmer, District 48, introduced his bill which would require that the manufacturer of a drug product be listed on the label. This requirement would be for the consumer as well as the pharmacist. There has been no opposition to such a requirement from either the manufacturers or the pharmacists of the state and he requested that the committee give it a favorable recommendation. PROPONENTS: Mr. Frank Davis, Montana Pharmaceutical Assn. stated that he was in favor of this bill and so were all of his colleagues. Currently a pharmacist has no information to base his decision on as to the reputation of the company he is purchasing his drugs from, only the word of the wholesaler. He requested that the committee give the bill a do pass recommendation. Mr. Patrick Nix, pharmacist from Berguim Drug in Helena, presented three bottles as examples of the correct and incorrect labeling should this piece of legislation pass. He stated that he was very much in favor of this bill and hoped that the committee would give it a do pass recommendation. Senator Palmer in closing stated that he felt such legislation was long overdue and vitally needed in the state.

SENATE BILL #97 -- SPONSOR: Senator Matt Himsl, District #9, introduced his bill which would allow the manufacture, possession, and administering of Laetrile by licensed physicians. He stated that his interest in such legislation was due to the fact that last year he informed that he had a malignant tumor in his stomach, and consequently had to have his stomach removed. He went on further to state that it was a freedom bill because it frees patients from conventional forms of cancer treatment; frees physicians who wish to prescribe Laetrile to do so without interference from medical health facilities; and frees the physician from any disciplinary action for prescribing or administering Laetrile as an adjunct to traditional treatment for malignancy. He stated that he was not going to argue the tests for the use of Laetrile because there was a lack of clinical evidence. But, there have been remarkable success stories with the use of Laetrile accompanied by Vitamin A and enzymes which has brought about regression of tumors. Currently, the Cancer Society warns that one out of every four persons can expect to be a cancer victim. Senator Himsl stated that perhaps introduction of Laetrile into Montana will give another option to a cancer victim's somewhat grim picture, as well as give them treatment without having to go to other states or even other countries. He stated that since his introduction of SB 97 he has received hundreds of letters from concerned citizens throughout the state cheering him on in his endeavor. He also presented a petition which was circulated unbeknownst to him until receipt with over 2,000 signatures on it requesting they be given a choice in cancer treatment. He requested that the committee give SB 97 a do pass recommendation for those less fortuneate who were suffering from cancer. PROPONENTS: Dr. Harold W. Manner, Chairman of the Biology Department of Loyola University in Chicago, IL, discussed his own research with Laetrile. He went on further to state that he is

effective therapy altogether and using Laetrile instead. Cancer is too dangerous a disease to treat with the "placebo effect", which many proponents of Laetrile suggest may be one of it's major contributions to the cure of cancer. While some Laetrile proponents claim the substance is a vitamin, experts in the vitamin area have concluded that it is not. He went on further to explain the legal status of Laetrile, which in 33 states is still against the law, and that even if this substance were made available for distribution in Montana, many of it's components would have to be transported here from other states; which is in violation with the interstate commerce laws. He requested that the committee give the bill an unfavorable recommendation. Mr. Frank Davis, a registered pharmacist in Montana, stated that he was neither in favor of Laetrile nor against it. He was worried, though, at how we were trying to circumvent federal law. He requested that the committee wait until the National Cancer Institute had completed their study and that it be approved by the F. D. A. Senator Himsl in closing stated, that although cancer researchers say they are making favorable progress in cancer cures, 1,300 people died of cancer in Montana last year. He also stated that since the F. D. A. was so good for the country, why did they continue allowing the sale of many products on the market which were recognized as causes to cancer. He read a letter from a concerned citizen whose son was not supposed to live longer than a few months, but because of Laetrile, he had lived seven years, and was getting stronger all the time. He requested that the committee give SB 97 a favorable recommendation to give all cancer victims a little more hope. Questions were asked and answers were given.

The following action was taken:

Rep. Gesek moved that the committee do concur with the Senate's favorable recommendation on SB 100. This motion carried unanimously.

Rep. O'Connell moved that the committee do concur with the Senate's favorable recommendation on SB 377. This motion carried unanimously. She agreed to carry the bill on the House floor.

Rep. Keyser moved that the amendments presented by Mr. Smith do pass. This motion carried with a 16 to 3 vote. Rep. Stobie moved that as amended SB 97 do pass. This motion carried with a vote of 15 to 4.

The meeting was adjourned at 3:15 by Chairman Holmes.

Dolly Holmes
CHAIRMAN

Pat Ratcliffe
SECRETARY

STATEMENT OF INTENT RE: SB 100

A statement of intent is required for this bill because it delegates rulemaking authority to the Department of Health and Environmental Sciences. This bill is intended to expand the authority of the Department of Health and Environmental Sciences to license health care facilities in order to cover additional health care facilities, and to revise the requirements of specific health care facilities to obtain a certificate of need. Generally the Department of Health and Environmental Sciences is intended to have the authority to amend and update existing licensure rules and to adopt new rules for licensure to conform with the mandates of P.L. 92-603 and the Social Security Act, titles V, XVIII, and XIX.

In the same spirit, the Department may write and adopt rules, in accordance with the Montana Administrative Procedure Act, to insure the implementation of a state certificate of need program which meets the minimum standards of P.L. 93-641, the National Health Planning and Resources Development Act, and which is acceptable to the Secretary of the Department of Health, Education and Welfare. This program is aimed at insuring that only new institutional health services, expenditures in excess of $150,000 made to prepare for a new institutional health service, or arrangements and commitments made to finance a new institutional health service which are found by the Department of Health and Environmental Sciences to be needed may be granted a certificate of need and that only those services which are granted a certificate of need may be offered to the public.

Section 2 if the primary, broad-based source of rulemaking authority for the entire chapter. Insofar as licensing and certification of health care facilities are concerned, Title 50, chapter 5, part 2, this section does not add any new discretionary authority beyond that already authorized for the Department, with the exception that this section is intended to allow the setting of certification standards for additional types of health care facilities, such as health maintenance organizations and adult day care centers not currently covered by law. This section is not intended to expand the existing rulemaking authority under part 4 except for rules specific to the additional health care facilities that will be covered.

Section 2 is intended to clearly authorize rulemaking authority to implement part 3. As a minimum, it is intended that the Department may adopt rules covering the following:

1. procedures and assurances required by 42 CFR 123.401 through 42 CFR 123.411 and any subsequent rules

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replacing or augmenting them;

2. procedures to be followed during the review process, including any interrelationships with review being conducted by a health systems agency; and

3. the effect on an application for certificate of need if the Department fails to decide whether to approve or disapprove the application within the time period set for review.

Section 5 is intended to allow the Department to require health care facilities to keep records and file reports with the Department containing information relevant to licensing, certification, statewide health planning, and resources development.

Section 9 is not intended to be construed to add new rulemaking authority beyond what is currently authorized for the Department. The rules referred to in the section refer to federal rules implementing the federal statute cited in this section.

Section 10 is intended to retain existing authority to set a licensing standards except that these standards may be set for the new types of health care facilities added by this bill.

Section 13 is intended to authorize the Department to prescribe by rule the form of letters of intent and applications for certificate of need and to specify what

information should be provided in each. This is further specific authority for rules governing a portion of the review process. The procedure for the entire review process is intended to be detailed under the authority delegated by Section 2.

Section 14 is explicit as to what review criteria, required findings, and standards must be included in Department rules adopted to implement the act; however, the Department may, within the scope of this section, adopt rules to more clearly define the criteria enumerated in this section.

Section 15 allows the Department to establish by rule what will constitute "good cause" to extend the period for which a certificate of need is valid.

Section 16 is intended to permit the Department to define what will constitute "good cause" to grant a reconsideration hearing, in order to prevent hearings based on frivolous grounds and to contain administrative costs. This section is also intended to authorize additional specific procedures for administrative hearings, at both the Department and Board levels, than are provided in the Montana Administrative Procedure Act but which are consistent with the provisions of MAPA.

Section 20 is intended to apply specifically to Title 50, chapter 5, part 4, and does not broaden existing

rulemaking authority except where it applies to the new types of health care facilities added by this bill.

First adopted by the SENATE COMMITTEE ON PUBLIC HEALTH, WELFARE, AND SAFETY on February 14, 1979.

SENATE BILL NO. 100

INTRODUCED BY NORMAN, MENAHAN

BY REQUEST OF

THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAWS RELATING TO HEALTH CARE FACILITIES, DEFINING HEALTH CARE FACILITIES TO INCLUDE AMONG OTHER ENTITIES HOME HEALTH AGENCIES AND ADULT DAY-CARE CENTERS AND ELIMINATING EXISTING LAWS DEALING WITH HOME HEALTH AGENCIES; PROVIDING FOR A CERTIFICATE OF NEED AND FOR REVIEW OF APPLICATIONS FOR CERTIFICATES OF NEED AND APPEAL PROCEDURES, PROVIDING GUIDELINES FOR DENIAL, SUSPENSION, OR REVOCATION OF HEALTH CARE FACILITY LICENSES; PROVIDING FOR CIVIL PENALTIES; AMENDING SECTIONS 50-5-101, 50-5-103 THROUGH 50-5-106, 50-5-108, 50-5-109, 50-5-201, 50-5-204, 50-5-207, 50-5-301, 50-5-302, 50-5-304 THROUGH 50-5-307, 50-5-402, 50-5-404, 50-5-405, 50-5-408, AND 50-5-411, MCA; AND REPEALING SECTIONS 50-5-102, 50-5-205, 50-5-206, 50-5-209, 50-5-303, 50-5-401, 50-5-412, AND 50-7-101 THROUGH 50-7-309, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through 3 ~~4~~ of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Adult day-care center" means a facility, free-standing or connected to another health care facility, which provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

(2) "Affected persons" means the applicant, members of the public who are to be served by the proposal, health care facilities located in the geographic area affected by the application, agencies which establish rates for health care facilities, and agencies which plan or assist in planning for such facilities, including any agency qualifying as a health systems agency pursuant to Title XV of the Public Health Service Act.

(3) "Ambulatory surgical facility" means a facility, not part of a hospital, which provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

~~(1)~~(4) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(5) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

~~(2) "Construction" means the erection, expansion, remodeling, or alteration of a new or existing facility, the~~

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~~capital--expenditure-for-which-amounts-to-$50,000-or-more-in any-12-month-period-or-any-substantial-change--in--services, any--increase-or-decrease-in-the-number-of-beds-in-excess-of 10%-of-the-licensed-capacity-of-the-facility-or-in-excess-of 10-beds,--whichever--is--the--lesser,--or--any--purchase--of therapeutic--or--diagnostic-equipment-(excluding-replacement of-existing-equipment)-in-any--12-month--period--at--a--cost exceeding-2%-of-the-facility's-total-operating-costs-for-the most--recently--completed--fiscal--year--up--to-a-maximum-of $100,000-or-exceeding-$10,000,--whichever--is--larger.---All exemptions---from---this--definition--must--nevertheless--be consistent-with-the-state-medical--facilities--plan--of--the department.~~

~~(6)~~ "Construction" means the physical erection of a health care facility and any stage thereof, including ground breaking.

~~(3)~~(7) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

~~(8) "Federal acts" means federal statutes for the construction of health care facilities.~~

~~(4)~~(9) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

~~(5)~~(10) "Health care facility" means ~~a---hospital,~~

~~hospital-related--facility,--or-long-term-care-facility.~~ any institution, building, or agency or portion thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospitals, infirmaries, kidney treatment centers, long-term care facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, and adult day-care centers.

(11) "Health maintenance organization" means a public or private organization organized as defined in 42 U.S.C. 300e, as amended.

(12) "Home health agency" means a public agency or private organization or subdivision thereof which is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

~~(6)~~(13) "Hospital" means a ~~health---care~~ facility ~~licensed-by-the-department-to-provide~~ providing, by or under

the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons. Services provided may or may not include obstetrical care, emergency care, or any other service as allowed by state licensing authority. A health care facility, in order to be licensed as a hospital, must have has an organized medical staff, provide which is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed professional registered nurses, and be in compliance with the rules for licensed hospitals adopted by the department. This term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

(7) "Hospital-related facility" means a facility licensed by the department to provide diagnosis, treatment, medical or nursing care, or medically related rehabilitation services. Such facilities include but are not limited to outpatient facilities, public health centers, rehabilitation facilities, long-term care facilities, infirmaries, mental health and mental retardation institutions, alcoholism and drug dependency centers, and half-way houses. A health care facility, in order to be licensed as a "hospital-related facility", shall be in compliance with the regulations for the specific category of facility adopted by the department.

(8)(14) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(9)(a) an "infirmary--A" "infirmary--A" provides outpatient and inpatient care;

(10)(b) an "infirmary--B" "infirmary--B" provides outpatient care only.

(15) "Kidney treatment center" means a facility which specializes in treatment of kidney diseases, including freestanding hemodialysis units.

(11)(16) (a) "Long-term care facility" means a place facility or part thereof which provides skilled nursing care or intermediate nursing care to a total of two or more persons or personal care to more than three persons who, by reason of illness or disability, are unable to properly care for themselves and are not related to the owner or administrator by blood or marriage and includes the facilities defined as follows, with these degrees of care defined as follows:

(i) "Skilled nursing facilities" are establishments furnishing continuous skilled nursing care and related services 24 hours a day care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a

24-hour basis.

(ii) "Intermediate nursing care" ~~facilities--A"--are establishments--furnishing--limited-skilled-nursing-care-and personal-care~~ means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(iii) ~~"Intermediate-----care-----facilities--B"-----are establishments-providing-only-personal-care-and-services--to residents.~~ "Personal care" means the provision of services and care which do not require nursing skills to residents needing some assistance in performing the activities of daily living.

~~(iv)-"Combination---facilities"---are----establishments providing--two--or--more--of-the-following-services:-skilled nursing-care-and-intermediate-care--A-and-B.~~

(b) Hotels, motels, ~~boardinghouses~~ boarding homes, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care are not ~~considered--to--be~~ long-term care facilities.

(17) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients or the rehabilitation of such persons, or any combination of these

services.

(18) "New institutional health services" means:

(a) the construction, development, or other establishment of a health care facility which did not previously exist;

(b) any expenditure by or on behalf of a health care facility within a 12-month period in excess of $150,000, which, under generally accepted accounting principles consistently applied, is a capital expenditure. Whenever a health care facility or a person on behalf of a health care facility makes an acquisition under lease or comparable arrangement or through donation, which would have required review if the acquisition had been by purchase, such acquisition shall be considered a capital expenditure subject to review.

(c) a change in bed capacity of a health care facility which increases or decreases the total number of beds, redistributes beds among various service categories, or relocates such beds from one physical facility or site to another over a 2-year period by more than 10 beds or 10% of the total licensed bed capacity, whichever is less;

(d) health services which are offered in or through a health care facility and which were not offered on a regular basis in or through such health care facility within the 12-month period prior to the time such services would be

offered or the deletion by a health care facility of a service previously offered.

(e) the expansion of a geographic service area of a home health agency.

(19) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

~~(12)~~(20) "Observation bed" ~~is~~ means a bed used occupied for not more than 6 hours by a patient recovering from surgery or other treatment.

(21) "Offer" means the holding out by a health care facility that it can provide specific health services.

~~(13)~~(22) "Outpatient facility--A" means ~~a physically separate component of a licensed hospital or a medical clinic or other establishment owned or operated by a licensed physician which has an observation bed or beds and provides to patients not requiring hospitalization the services of persons licensed to practice medicine or dentistry in the state of Montana. No patient may be allowed to remain in an outpatient facility for more than 6 hours~~ a facility, located in or apart from a hospital, providing, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An out-patient OUTPATIENT facility may have observation beds.

~~(14) "Outpatient facility--B" means a facility operated physically apart from a hospital, other than a medical clinic or other establishment owned or operated by a licensed physician, which provides to ambulatory patients not requiring hospitalization the services of persons licensed to practice medicine or dentistry in Montana, but which does not have an observation bed or beds as defined in subsection (12).~~

(23) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

~~(15)~~(24) "Person" means an any individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

~~(16)~~(25) "Public health center" means a publicly owned facility ~~utilized by a local health unit for the provision~~ providing of public health services, including related public facilities such as laboratories, clinics, and administrative offices operated in connection with a public health center.

~~(17)~~(26) "Rehabilitation facility" means a facility ~~providing community service~~ which is operated for the primary purpose of assisting in the rehabilitation of disabled persons ~~through an integrated program under competent professional supervision, including medical~~

services--and--evaluation--and--psychological--social--and vocational----services----and----evaluation by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

~~(10)~~(27) "Resident" means a person who is in a long-term care facility as a patient or for intermediate or personal care.

(28) "State plan" means the state medical facility plan provided for in part 4."

Section 2. Section 50-5-103, MCA, is amended to read:

"50-5-103. Rules and standards. (1) The department shall promulgate, and adopt and publish rules and minimum standards for ~~licensure of all hospitals and hospital-related facilities~~ for implementation of parts 1 through 4.

~~(2) Rules relating to building, equipment, and fire and life safety shall be covered by the state building code.~~ Any facility covered by this chapter shall comply with the state and federal requirements relating to construction, equipment, and fire and life safety.

(3) The department shall extend a reasonable time for compliance with rules for parts 1 through 4 after adoption."

Section 3. Section 50-5-104, MCA, is amended to read:

"50-5-104. Certain exemptions for spiritual healing institution. Parts 1 through 3 and rules and standards adopted by the department may not authorize the supervision, regulation, or control of care or treatment of persons in any home or institution conducted for those who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denomination. However, a license is required and ~~all other~~ the minimum standards referred to in 50-5-103(2) apply."

Section 4. Section 50-5-105, MCA, is amended to read:

"50-5-105. Discrimination ~~among patients of physicians~~ prohibited. (1) All phases of the operation of a health care facility shall be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, age, marital status, physical or mental handicap, or political ideas.

(2) No person who operates a facility may discriminate among the patients of licensed physicians. The free and confidential professional relationship between a licensed physician and patient shall continue and remain unaffected. ~~Physicians shall continue to have direction over their patients.~~"

Section 5. Section 50-5-106, MCA, is amended to read:

"50-5-106. ~~Information--received-confidential~~ Records and reports required of health care facilities -- confidentiality. Health care facilities shall keep records and make reports as required by the department. Before February 1 of each year, every licensed health care facility shall submit an annual report for the preceding calendar year to the department. The report shall be on forms and contain information specified by the department. Information received by the department or board through reports, ~~inspection~~ inspections, or provisions of parts 1 ~~through--3~~ and 2 may not be disclosed in a way which would identify ~~individuals-or-facilities,-except-in-a-proceeding--involving the--question--of--licensure--or--as-required-by-the-federal government-for-certification-or-preparation-of-a-state--plan~~ patients. A DEPARTMENT EMPLOYEE WHO DISCLOSES INFORMATION WHICH WOULD IDENTIFY A PATIENT SHALL BE DISMISSED FROM EMPLOYMENT AND SUBJECT TO THE PROVISION OF 45-7-401, UNLESS THE DISCLOSURE WAS AUTHORIZED IN WRITING BY THE PATIENT, HIS GUARDIAN, OR HIS AGENT. Information and statistical reports from health care facilities which are considered necessary by the department for health planning and resource development activities will be made available to the public and the health planning agencies within the state. Applications by health care facilities for certificates of need and any information relevant to review of these

applications, pursuant to part 3, shall be accessible to the public."

Section 6. Section 50-5-108, MCA, is amended to read:

"50-5-108. Injunction. The department, on advice of the attorney general, may ~~maintain~~ bring an action for injunction or other process against any person to restrain or prevent the establishment, conduct, management, or operation of a facility which is ~~endangering--health--and welfare~~ in violation of any provision of parts 1 or 4 of this chapter."

Section 7. Section 50-5-109, MCA, is amended to read:

"50-5-109. Penalty. A person who violates provisions of parts 1 ~~through--3~~ or 4 is guilty of a misdemeanor. On conviction he shall be fined not more than $100 for the first offense and not more than $300 for each subsequent offense. ~~Each-day-of-a-continuing-violation-after-conviction is-a-separate-offense.~~"

Section 8. Section 50-5-201, MCA, is amended to read:

"50-5-201. License requirements. (1) A licensee who contemplates construction of or alteration or addition to a health care facility shall submit plans and specifications to the department for preliminary inspection and approval prior to commencing construction.

~~(1)~~(2) No person may operate a health care facility unless the facility is licensed by the department. Licenses

shall be for 1 year unless issued for a shorter period. A license is valid only for the person and premises for which it was issued. A license may not be sold, assigned, or transferred.

~~(2)~~(3) Upon discontinuance of the operation or of transfer of ownership of a facility, the license must be returned to the department.

~~(3)~~(4) Licenses shall be displayed in a conspicuous place near ~~where--patients--or--residents-are-admitted~~ the admitting office of the facility."

Section 9. Section 50-5-204, MCA, is amended to read:

"50-5-204. Issuance and renewal of licenses. (1) On receipt of a new or renewal application, the department or its authorized agent shall inspect the facility. If minimum standards are met and the proposed staff is qualified, the department shall issue a license for 1 year. If minimum standards are not met, the department may issue a provisional license for less than 1 year if operation will not result in undue hazard to patients or residents or if the demand for accommodations offered is not met in the community. The minimum standards which home health agencies must meet in order to be licensed shall be as outlined in 42 U.S.C. 1395 x(o), as amended, and in rules implementing it which add minimum standards.

(2) Licensed premises shall be open to inspection, and

access to all records shall be granted at all reasonable times."

Section 10. Section 50-5-207, MCA, is amended to read:

"50-5-207. Denial, suspension, or revocation of ~~hospital-or-hospital-related~~ health care facility license -- provisional license. (1) The department may deny, suspend, or revoke a ~~hospital--or--hospital-related~~ health care facility license if ~~it--finds--there--has--been--substantial failure--to-comply-with-the-provisions-of-parts-1-through-3,~~ any of the following circumstances exist:

(a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.

(b) The staff is insufficient in number or unqualified by lack of training or experience.

(c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.

(d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.

(e) There is cruelty or indifference affecting the welfare of the patients or residents.

(f) There is misappropriation of the property or funds

of a patient or resident.

(g) There is conversion of the property of a patient or resident without his consent.

(h) Any provision of parts 1 through 3 is violated.

(2) The department may reduce a license to provisional status if as a result of an inspection it is determined minimum standards are not being met.

(3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need requirements of part 3."

NEW SECTION. Section 11. Civil penalty -- injunction. (1) A person who violates the terms of [Title 50, chapter 5, part 2,] is subject to a civil penalty not to exceed $1,000. Each day of violation constitutes a separate violation. The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may petition the district court to impose, assess, and recover the civil penalty. Money collected as a civil penalty shall be deposited in the state general fund.

(2) The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may bring an action to enjoin a violation of any provision of [Title 50, chapter 5, part 2], in addition to or exclusive of the remedy in

subsection (1).

Section 12. Section 50-5-301, MCA, is amended to read:

"50-5-301. ~~Preliminary---submission---of---plans---for approval.~~ When application is required. ~~(1)--The--department may--adopt--rules--to--require--an-applicant-or-licensee-who contemplates-construction-of,-alteration-or--addition--to--a health--care--facility-to-submit-plans-and-specifications-to the-department-for-preliminary-inspection-and-approval-prior to-commencing-construction.~~

~~(2)--Approval-may--be--given--only--if--the--plans--and specifications---conform--to--the--state--or--the--municipal building-code-which--applies--to--the--facility.~~ Unless an application has been submitted to and a certificate of need granted by the department, no person may initiate any of the following:

(1) a new institutional health service as defined in 50-5-101;

(2) any expenditure by or on behalf of a health care facility in excess of $150,000 made in preparation for the offering or development of a new institutional health service and any arrangement or commitment made for financing the offering or development of the new institutional health service. Expenditures made in the preparation for the offering of a new institutional health service shall include expenditures for architectural designs, preliminary plans,

working drawings, specifications, studies, and surveys."

Section 13. Section 50-5-302, MCA, is amended to read:

"50-5-302. Form---and---content---of--application--for approval Application and review process. (1)-An--application for--approval--must-be-submitted-to-the-department-in-a-form together-with-information-as-the-department--may--prescribe, (2)--The-application-shall-include:

(a)--a--narrative--description-of-the-proposed-project;

(b)--the-number-and-type-of-beds-and/or-services-to--be provided;

(c)--the-estimated-cost;

(d)--the-source-of-financing;

(e)--the--expected--time-for-completion-of-the-proposed project;-and

(f)--a-simple-line-drawing-showing-major--dimensions-of the-proposed-project. (1) Any person intending to initiate an activity for which a certificate of need is required shall submit a letter of intent to the department. After receipt, the department shall send the applicant a form requiring the submission of information considered necessary by the department to determine if the proposed activity meets the standards in 50-5-304. The form and content of the notification of intent and applications for certificates of need shall be prescribed by rule by the department.

(2) Within 15 calendar days after receipt of the

application, the department shall determine whether it contains sufficient information to determine if the proposed activity meets the standards in 50-5-304. If the application is found incomplete, the department shall request additional information.

(3) After the application has been designated complete, notification must be sent to the applicant and all other affected persons regarding the department's projected review of the application and the review period time schedule. The review period for the application may be no longer than 90 calendar days after the notice is sent unless a longer period is agreed to by the applicant. During the review period a public hearing may be held if requested by one or more affected persons.

(4) The department shall, after considering all comments received during the review period, issue a certificate of need, with or without conditions, or reject the application. If-the-department-fails-to-act-within-the designated-period-and-an-extension-has-not-been-granted,-the failure-to-act-constitutes-disapproval-of--the--application. The department shall notify the applicant and affected persons of its decision."

Section 14. Section 50-5-304, MCA, is amended to read:

"50-5-304. Requirements-for-approval Review criteria, required findings, and standards. (1)-No-application-may-be

approved unless the action proposed:

(a) Is necessary to provide required health care in the area to be served;

(b) Can be economically accomplished and maintained; and

(c) Will contribute to the orderly development of adequate and effective health services.

(2) In making the determinations enumerated in subsection (1), the following shall be considered:

(a) The compatibility with needs shown in the appropriate state plan provided by those statutes relating to facilities contained in part 4 of this chapter;

(b) The availability of facilities or services which may serve as alternates or substitutes;

(c) The need for special equipment and services in the area;

(d) The possible economies and improvement in services to be anticipated from the operation of combined central services, including but not limited to laboratory, research, radiology, pharmacy, laundry, and purchasing;

(e) The adequacy of financial resources and sources of future revenues; and

(f) The availability of sufficient manpower in the several professional disciplines. The department shall by rule promulgate and utilize, as appropriate, specific

criteria for reviewing certificate of need applications under this chapter, including but not limited to the following considerations and required findings:

(1) The relationship of the health services being reviewed to the applicable health systems plan and annual implementation plan developed pursuant to Title XV of the Public Health Service Act, as amended;

(2) The relationship of services reviewed to the long-range development plans, if any, of the person providing or proposing the services;

(3) The need that the population served or to be served by the services has for the services;

(4) The availability of less costly QUALITY EQUIVALENT or more effective alternative methods of providing such services;

(5) The immediate and long-term financial feasibility of the proposal as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the health service;

(6) The relationship and financial impact of the services proposed to be provided to the existing health care system of the area in which such services are proposed to be provided;

(7) The availability of resources, including health manpower, management personnel, and funds for capital and

operating needs for the provision of services proposed to be provided and the availability of alternative uses of such resources for the provision of other health services;

(8) the relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services;

(9) the special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. Such entities may include medical and other health profession schools, multidisciplinary clinics, and specialty centers.

(10) the special needs and circumstances of health maintenance organizations for which assistance may be provided under Title XIII of the Public Health Service Act. Such needs and circumstances include the needs of and costs to members and projected members of the health maintenance organization in obtaining health services and the potential for a reduction in the use of inpatient care in the community through an extension of preventive health services and the provision of more systematic and comprehensive health services.

(11) the special needs and circumstances of biomedical and behavioral research projects which are designed to meet

a national need and for which local conditions offer special advantages;

(12) in the case of a construction project, the costs and methods of the proposed construction, including the costs and methods of energy provision, and the probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project;

(13) the distance, convenience, cost of transportation, and accessibility of health services for persons who live outside urban areas in relation to the proposal; and

(14) any other criteria, required findings, or requirements for reviewing certificate of need applications cited in the federal regulations found in Title 42, CFR, Part 123, as amended."

Section 15. Section 50-5-305, MCA, is amended to read:

"50-5-305. Period of validity of approved application. ~~An approved application for construction is valid for 1 year from the date of issue but may be extended by the department for a period of 6 months.~~ A certificate of need shall terminate 1 year after the date of issuance unless:

(1) the applicant has commenced construction if the project provides for construction or has incurred an enforceable capital expenditure commitment for projects not involving construction; or

(2) the certificate of need validity period is extended by the department for one additional period of 6 months, upon showing good cause by the applicant for the extension."

Section 16. Section 50-5-306, MCA, is amended to read:

"50-5-306. Right to hearing and appeal. ~~(1) If the department disapproves an application for construction of a facility, it shall notify the applicant of its actions and afford the applicant an opportunity to request a hearing before the board.~~

~~(2) When this hearing is desired, the applicant shall notify the department in writing within 15 days after the notice of disapproval is received.~~

~~(3) If the decision after hearing is adverse, the applicant may appeal to the district court as provided in Title 2, chapter 4, part 7.~~ (1) THE APPLICANT OR A HEALTH SYSTEMS AGENCY DESIGNATED PURSUANT TO TITLE XV OF THE PUBLIC HEALTH SERVICE ACT MAY REQUEST AND SHALL BE GRANTED A PUBLIC HEARING BEFORE THE DEPARTMENT TO RECONSIDER ITS DECISION, IF THE REQUEST IS RECEIVED BY THE DEPARTMENT WITHIN 30 CALENDAR DAYS AFTER THE DECISION IS ANNOUNCED. Any OTHER affected person may, for good cause, request the department to reconsider its decision at ~~a public~~ SUCH A hearing. The department shall grant the request if the affected person submits the request in writing showing good cause as defined

in rules adopted by the department and if the request is received by the department within 30 calendar days after the decision is announced. The public hearing to reconsider shall be held, if warranted OR REQUIRED, within 30 calendar days after its request. The department shall make its final decision and written findings of fact and conclusions of law in support thereof within 45 days after the conclusion of the reconsideration hearing. THE HEARING SHALL BE CONDUCTED IN ACCORDANCE WITH 2-4-601 THROUGH 2-4-623.

(2) An aggrieved applicant or a health systems agency designated pursuant to Title XV of the Public Health Service Act may appeal the department's final decision to the board by filing a written notice of appeal stating the specific findings of fact and conclusions of law being appealed and the grounds. The notice of appeal must be received by the board within 30 calendar days after formal notice of the department's final decision was issued. The board shall give public notice of the appeal within 10 days, and the hearing shall be held within 30 days after receipt of the notice of appeal.

(3) The scope of the hearing before the board is limited to a review of the record upon which the department made its decision. THE BOARD, UPON REQUEST OF ANY PARTY TO AN APPEAL BEFORE THE BOARD, SHALL HEAR ORAL ARGUMENTS AND RECEIVE WRITTEN BRIEFS. Within 45 calendar days after the

conclusion of the public hearing, the board shall make and issue its decision, supported by written findings of fact and conclusions of law. The board may affirm the department's decision or remand it for further proceedings. The board may reverse or modify the department's decision if the appellant's rights have been prejudiced for any of the reasons found in 2-4-704.

(4) The final decision of the board shall be considered the decision of the department for purposes of an appeal to district court. Any affected person may appeal this decision to the district court as provided in Title 2, chapter 4, part 7.

(5) The department may by rule prescribe in greater detail the hearing and appellate procedures."

Section 17. Section 50-5-307, MCA, is amended to read:

"50-5-307. ~~Penalties for failure to obtain prior~~ approval ~~of department~~ Civil penalty -- injunction. ~~Penalties for failure to obtain prior approval of the department are as follows:~~

~~(1) Any person who constructs any new health care facility as defined in 50-5-101 without prior approval by the department is guilty of a misdemeanor and shall be punished by a fine of not less than $1,000 or more than $10,000, the fine to be deposited in the state general fund, and this new facility is not eligible for licensure as a health care facility as defined in 50-5-101.~~

~~(2) Any person who expands, remodels, or alters an existing health care facility as defined in 50-5-101 without prior written approval by the department is guilty of a misdemeanor and shall be punished by a fine of not less than $1,000 or more than $10,000, the fine to be deposited in the state general fund.~~ (1) A person who violates the terms of ~~50-5-301~~ 50-5-301 is subject to a civil penalty of not less than $1,000 or more than $10,000. Each day of violation constitutes a separate offense. The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may petition the district court to impose, assess, and recover the civil penalty. Money collected as a civil penalty shall be deposited in the state general fund.

(2) The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may bring an action to enjoin a violation of 50-5-301, in addition to or exclusive of the remedy in subsection (1)."

NEW SECTION. Section 18. Special circumstances. In the event of destruction of any part of a health care facility as a result of fire, storm, civil disturbance, or any act of God, the department may issue a certificate of need for only the replacement of the previously existing facility or portion thereof.

Section 19. Section 50-5-402, MCA, is amended to read:

"50-5-402. Administration of state ~~medical facility~~ plan. The department is the principal state agency for establishing and administering a statewide plan for construction, modernization, alteration, equipment, maintenance, or operation of a ~~hospital, medical, or related~~ health care facility for provision of care, treatment, diagnosis, rehabilitation, training, or related service. ~~This plan is to be known as the state medical facility~~ plan."

Section 20. Section 50-5-404, MCA, is amended to read:

"50-5-404. Duties of department. The department shall:

~~(1) adopt necessary rules for the administration of this part;~~

~~(2)~~(1) prescribe minimum standards for the maintenance and operation of ~~hospital, medical, and related~~ health care facilities receiving federal aid for construction under the state plan;

~~(3)~~(2) inventory existing hospital, medical, and related health care facilities;

~~(4)~~(3) survey the need for construction or alteration of ~~hospitals~~ health care facilities;

~~(5)~~(4) develop and administer a state plan for the construction and alteration of public and other nonprofit ~~hospital, medical, and related~~ health care facilities;

~~(6)~~(5) if desirable, enter into agreements for the utilization of facilities and services of other departments, agencies, and institutions, public or private;

~~(7)~~(6) accept and deposit with the state treasurer and spend any ~~grant, gift, or contribution~~ made to meet costs of carrying out this part;

~~(8)~~(7) prepare and review a construction program in accordance with federal requirements that will provide adequate ~~hospital, medical, and related~~ health care facilities to people in the state providing, as far as possible, for distribution throughout the state to make all types of services reasonably ~~acceptable~~ available to all persons;

~~(9)~~(8) submit to federal agencies state plans, including those for the ~~hospital, medical, and related~~ health care facilities construction program and modifications of it providing for the establishment and operation of ~~hospital, medical, and related~~ health care facilities construction activities in accordance with federal requirements;

~~(10)~~(9) make application to the appropriate federal agency for funds to assist in carrying out the survey and planning activities;

~~(11)~~(10) after approval of a plan by the appropriate federal agency, publish a description in newspapers having

general circulation throughout the state and make the plan available upon request to all persons or organizations;

~~(2)~~(1)(1) inspect construction or alteration projects approved by the appropriate federal agency and, if satisfactory, certify that work has been performed on the project or purchases made in accordance with approved plans and specifications and that payment of federal funds is due to the applicant;

~~(3)~~(1)(2) require reports and make inspections and investigations as necessary or required by the federal agency;

~~(4)~~(1)(3) contract with consultants for services which are performed on a part-time or fee-for-service basis not involving administrative duties."

Section 21. Section 50-5-405, MCA, is amended to read:

"50-5-405. Contracts with federal agencies. The department may enter into contracts and agreements with agencies of the federal government to secure the benefit of federal programs to provide adequate ~~medical--and--related~~ health care facilities and services."

Section 22. Section 50-5-408, MCA, is amended to read:

"50-5-408. Applications for construction projects. Applications for ~~hospital,-medical,-and-related~~ health care facilities construction projects may be submitted by a state agency, a political subdivision, or by any public or

nonprofit agency authorized to construct and operate a ~~hospital,-medical,-or-related~~ health care facility."

Section 23. Section 50-5-411, MCA, is amended to read:

"50-5-411. Consolidated applications. (1) Boards of county commissioners of two or more counties may submit a consolidated application for a single ~~hospital,-medical~~ health care facility, or health center serving each of the counties included in the application.

(2) Any statutes investing counties with powers to construct, maintain, and operate ~~hospitals-or-medical~~ health care facilities directly or by lease or contract may be utilized for this joint action.

(3) All statutes governing submission of questions of establishing a ~~hospital-or--medical~~ health care facility, ~~hospital--or--medical~~ health care facility construction, issuance of bonds, or method of operation, and requiring a majority vote of taxpayers on the questions shall apply.

(4) Concurrent and joint action of two or more counties and approval by a majority of the voters in each county is required to authorize the issuance of bonds, construction, and contracts under a consolidated plan."

Section 24. Saving clause. This act does not affect certificate of need applications received and declared complete or granted by the department before the effective date of this act.

Section 25. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 26. Codification. (1) It is intended that section 11 of this act be codified as an integral part of Title 50, chapter 5, part 2; and the provisions contained in Title 50, chapter 5, parts 1 through 4, apply to section 11 of this act.

(2) It is intended that section 18 of this act be codified as an integral part of Title 50, chapter 5, part 3; and the provisions contained in Title 50, chapter 5, parts 1 through 4, apply to section 18 of this act.

Section 27. Repealer. Sections 50-5-102, 50-5-205, 50-5-206, 50-5-209, 50-5-303, 50-5-401, 50-5-412, and 50-7-101 through 50-7-309, MCA, are repealed.

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